
United States
Circuit Court of Appeals
For the Ninth Circuit.

HAMILTON TRUST COMPANY,
Complainant and Appellant,
and
CORNUCOPIA MINES COMPANY OF OREGON, et al.,
Respondents and Appellants,
vs.
JOHN L. BISHER, JR., by John L. Bisher, his guardian
ad litem,
Intervener and Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United
States for the District of Oregon.

Filed

JAN - 4 1915

F. D. Monckton,
Clerk,

United States
Circuit Court of Appeals
For the Ninth Circuit.

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HAMILTON TRUST COMPANY,

Plaintiff and Appellant,

vs.

CORNUCOPIA MINES COMPANY
OF OREGON,

Defendant and Appellant,

JOHN L. BISHER, JR., by John L. Bisher,
his Guardian *ad litem*,

Intervenor and Appellee.

Names and Address of Attorneys of Record:

Wood, Montague & Hunt, Spalding Building, Portland, Oregon, for Plaintiff and Appellant.

Emmett Callahan, Northwestern Bank Building, Portland, Oregon, for Defendant and Appellant.

C. A. Johns, Yeon Building, Portland, Oregon, and
Boothe & Richardson, Board of Trade Building, Portland, Oregon, for Intervenor and Appellee.

*In the District Court of the United States for the
District of Oregon.*

(IN EQUITY.)

HAMILTON TRUST COMPANY,
Complainant,

vs.

THE CORNUCOPIA MINES COMPANY
OF OREGON, et al.,

Respondents,

and

JOHN L. BISHER, JR., by John L. Bisher,
his Guardian *ad litem*,

Intervener.

Citation on Appeal.

UNITED STATES OF AMERICA to John L.
Bisher, Jr., by John L. Bisher, his Guardian *ad*
litem, Intervener herein, GREETING:

YOU ARE HEREBY NOTIFIED that in a cer-
tain case in equity in the United States District
Court for the District of Oregon, wherein Hamilton
Trust Company is complainant and The Cornucopia
Mines Company of Oregon, et al., are respondents
and appellants, and John L. Bisher, Jr., by John
L. Bisher, his Guardian *ad litem*, is Intervenor and
appellee, and appeal has been allowed the com-
plainant and appellants therein to the United States
Circuit Court of Appeals, Ninth Circuit.

You are hereby cited and admonished to be and
appear in said Court at San Francisco, California,
thirty days after the date of this citation, to show
cause, if any there be, why the order and decree ap-
pealed from should not be corrected and speedy
justice done the parties in that behalf.

WITNESS THE HONORABLE CHARLES E. WOLVERTON, Judge of the United States District Court for the District of Oregon, this 30th day of July, A. D. 1914.

CHAS. E. WOLVERTON,
United States District Judge.

Due service of the above citation on appeal by true copy thereof, is hereby accepted and admitted at Portland, Oregon, July 30th, 1914.

CHAS. A. JOHNS,
Of Intervenor's Attorneys.

Filed July 30th, 1914.

A. M. CANNON,
Clerk.

*In the Circuit Court of the United States for the
the District of Oregon.*

October Term, 1911.

BE IT REMEMBERED, That on the 5th day of
December, 1911, there was duly filed in the ~~DISTRICT~~
~~CIRCUIT~~ COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON, a Bill of
Complaint, in words and figures as follows, to-wit.

BILL OF COMPLAINT.

*In the Circuit Court of the United States for the
District of Oregon.*

(IN EQUITY.)

HAMILTON TRUST COMPANY,

Complainant,

vs.

THE CORNUCOPIA MINES COMPANY,
OF OREGON, a Corporation, and
VALENTINE LAUBENHEIMER and
S. W. HOLMES,

Respondents.

Foreclosure of Bonded Mortgage.

To the Honorable W. B. Gilbert, Charles E. Wol-
verton and Robert S. Bean, Judges of the above en-
titled Court:

Now comes your orator, Hamilton Trust Com-
pany, a corporation, by Williams, Wood & Linthi-
cum, its solicitors, and humbly complains against the

respondents, The Cornucopia Mines Company of Oregon and Valentine Laubenheimer and S. W. Holmes and shows to your Honors as follows:

I. That at all times hereinafter mentioned your orator was and now is a banking corporation duly created, organized and existing under and by virtue of the laws of the State of New York and has power to accept the mortgage hereinafter mentioned and to execute all of the trusts thereunder and hereinafter stated, and your orator at all the times hereinafter mentioned was and now is a citizen of the State of New York.

Ia. That at all times hereinafter mentioned the respondent, The Cornucopia Mines Company of Oregon (hereinafter for brevity called "The Mines Company") was and still is a corporation duly created, organized, existing and operating under and by virtue of the laws of the State of Maine, but has an agency duly established in the State of Oregon, according to law, for the transaction of its business in the State of Oregon, and Emmett Callahan of Baker City, Oregon, is its duly and regularly appointed officer designated as the one upon service may be made. And said respondent, The Mines Company, has paid all of its annual fees and dues and is regularly and duly licensed to do business in the State of Oregon, and the respondent, The Mines Company, during all the times hereinafter mentioned, was and now is a citizen of the State of Maine.

Ib. The respondent, Valentine Laubenheimer, is a citizen of the State of California.

Ic. The respondent, S. W. Holmes, is a citizen of the State of Washington.

II. That the said respondents, Valentine Laubenhaimer and S. W. Holmes, are the only persons, other than your orator, claiming any interest in or against the respondent, The Mines Company.

IIa. That the respondent, Valentine Laubenhaimer, as your orator is informed and believes and therefore so alleges, holds a judgment against the respondent, The Mines Company, in, to-wit, the sum of about \$8,000.00, which judgment was recovered in and stands of record in this Honorable Court and was entered on the Judgment Docket on the.....

.....day of....., 1911.

IIb. That a judgment in the sum of, to-wit, \$1,000.00 stands upon the judgment docket of the Circuit Court of the State of Oregon for the County of Baker, in the names of the respondent, S. W. Holmes, and against the respondent, The Mines Company, which judgment, as your orator is informed and believes and therefore so alleges has been fully satisfied and paid.

IIc. Your orator alleges that any claim or judgment whatever of the respondents, Valentine Laubenhaimer and S. W. Holmes, is subsequent in time and inferior in equity to the claim of your orator against said The Mines Company as hereinafter more particularly set forth.

IIId. The amount involved in this dispute exceeds the sum of \$2,000.00, exclusive of interest and costs and is, to-wit, the sum of \$300,000.00.

III. The defendant, The Mines Company, ever since its incorporation has had full power and authority to own and possess the property conveyed by it and by the mortgage hereinafter mentioned, and therein set forth and hereinafter described, and had full power and authority to execute and deliver said mortgage for the purposes therein set forth, and the plaintiff had full power and authority to receive said mortgage and to accept the trusts created in and by the same.

IV. That on or about the 1st day of April, 1905, the said defendant, The Mines Company, in the due exercise of the powers and authority in that behalf possessed, and due corporate action having first been had, and for the purpose of making part payment for its mines, mining claims, equipment and properties, and discharging to that extent its obligations, did determine to issue its bonds to be known as its First Mortgage Six Per Cent Gold Bonds, consisting of six hundred (600) coupon bonds for Five Hundred (\$500) Dollars each, numbered consecutively from One (1) to Six Hundred (600) both inclusive, each payable to bearer, or the registered holder thereof, in gold coin of the United States of America, of or equal to the then standard of weight and fineness on the first day of April 1911 at the Hamilton Trust Company, in the Borough of Brooklyn, City of New York, State of New York, with

interest thereon from the 1st day of October, 1905, at the rate of six (6%) per cent per annum, payable in like gold coin, semi-annually on the 1st days of April and October in each year, upon presentation and surrender of the coupons annexed thereto as they should severally mature and become due.

And thereafter the defendant The Mines Company made and executed its certain bonds in the amount and numbered as aforesaid, of the aggregate par value of principal of Three hundred thousand (\$300,000) Dollars, bearing date the 1st day of April, 1905. By each of said bonds the defendant The Mines Company acknowledged itself indebted and for value promised to pay to the bearer, or if registered, to the registered holder thereof on the 1st day of April, 1911, at the Hamilton Trust Company in the Borough of Brooklyn, City and State of New York, the sum of Five hundred (\$500) Dollars the face value thereof in gold coin of the United States of America, of or equal to the then standard of weight and fineness, with interest thereon from the said 1st day of October, 1905, at the rate of six (6%) per cent per annum, payable in like gold coin semi-annually on the 1st days of April and October in each year upon presentation and surrender of the interest coupons thereto annexed, as they should severally mature and become due, until such principal sum was fully paid.

That the full Three hundred thousand (\$300,000) Dollars par value of bonds have been duly executed by The Mines Company, authenticated by the plaintiff and duly issued and delivered by it pursuant to the provision of the mortgage hereinafter mentioned,

and plaintiff is informed and believes that the said Three hundred thousand (\$300,000) Dollars of bonds executed by The Mines Company and authenticated by it and delivered as aforesaid, have been duly issued, negotiated and sold and all of the same are now outstanding, and valid obligations of the defendant The Mines Company, and that the same with the coupons annexed thereto, have come into the possession of a large number of persons for value, who are now the *bona fide* owners and holders thereof, the names of many of such persons being unknown to plaintiff.

V. That in order to secure the payment of the principal and interest of said bonds and the coupons thereto annexed, as the same should become due and payable and the performance and observance of all the other covenants, conditions and agreements on the part of The Mines Company contained in said bonds and the mortgage or deed of trust, the defendant The Mines Company in the further due exercise of the corporate authority by it in that behalf possessed, and due corporate action having been first had, for a valuable consideration first paid, made, executed and delivered to the plaintiff its certain mortgage or deed of trust, bearing date the 1st day of April, 1905, wherein and whereby it granted, bargained, sold, released, conveyed, assigned, transferred and set over unto the plaintiff, as trustee, and its successors and assigns in the trusts thereby created, all and singular the mines, mining claims, equipment and other property then held or acquired or thereafter acquired or held, and also all the easements, property, leasehold

rights and things of whatsoever name or nature then owned by The Mines Company or which might be thereafter acquired by it, the said property then in existence being specifically described in said mortgage or deed of trust as follows:

All and singular, the following mines, mining claims, equipment and properties, to-wit:

1. All that certain quartz lode mining claim known, located and recorded as the "Union," the same being designated by the Surveyor General as lot No. 310, embracing a portion of Sec. 28 T6 SR 45 E. W. M., and designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 125, containing 19.27 acres more or less.

2. All that certain quartz lode mining claim known, located and recorded as the "Companion," the same being designated by the Surveyor General as lot No. 312, embracing a portion of Sec. 28 T6 SR 45 E. W. M., the same being designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 124 and containing 12.57 acres more or less.

3. All that certain quartz lode mining claim known, located and recorded as the "Red Jacket," described as follows: Beginning at a corner post No. 1 S. 61.05 east 1563 feet from the quarter section corner between Sects. 27 and 28, T. 6 S. R. 45 E. W. M., marked corner No. 1, R. J. M. C. sur. No. 10, thence N. 15.1032 East 1353 feet to corner post No. 2, thence

N. 82 west 600 feet to corner post No. 3, thence S. 91.015 west 1339 feet to the corner post No. 4, thence S. 82 East 450 feet to place of beginning, designated by Surveyor General as lot No. 43, embracing a portion of sec. 28 T. 6 S. R. 45 E. W. M., certificate No. 68, and containing 16.13 acres more or less.

4. All that certain quartz lode mining claim known, located and recorded as the "Prescott," the same being designated by Surveyor General as Lot No. 313, embracing a part of Sec. 28 T. 6 S. R. 45 E. W. M., and designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 126, and containing 11.60 acres more or less.

5. All that certain quartz lode mining claim known, located and recorded as the "Phoenix," described as follows: Commencing at monument at west and center of claim which is also at N. E. corner of Union Mine and S. E. corner of Companion Mine, thence northerly along east side line of Companion Mine 300 ft. to monument at N. N. corner of Phoenix claim, thence easterly 500 ft. to N. E. corner monument of claim, thence southerly 600 ft. to S. E. corner of claim, being also at N. center and monument of Lone Star U. S. Survey 219 westerly 500 ft. S. W. corner of claim on east side line of Union Mine, thence northerly 300 ft. along said Union side line to place of beginning, the same being designated by Surveyor General as lot No. 311, embracing a part of Sec. 28 T. 6 S. R. 45 E. W. M., and designated in the United States Land Office at LaGrande, Union

County, Oregon, as mineral entry numbered 128, and containing 5.52 acres more or less.

6. All that certain quartz lode mining claim known, located and recorded as the "Helena," the same being designated by Surveyor General as lot 314, embracing a portion of sects. 28 and 33 in T. 6 S. R. 45 E. W. M., and designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 127, containing 17.47 acres more or less.

7. All that certain quartz lode mining claim known, located and recorded as the "Montana Consolidated," comprising the quartz lode claim known, located and recorded as the "Omer," "Montana," "Cliff," and "Butte," designated by the Surveyor General as lot No. 321, embracing a portion of sects. 21 and 28, T. 6 S. R. 45 E. W. M., and also designated in the United States Land Office at LaGrande, Union County, Oregon, as mineral entry numbered 134, and containing 40.89 acres more or less; for a more particular description of said Montana Consolidated reference is had to the location notice thereof recorded in Book F of quartz mining claims, page 402 of the Union County Records.

8. All that certain quartz lode mining claim known, located and recorded as the "Whitman," and designated by the Surveyor General as lot No. 37, embracing a portion of sects. 27 and 28 in T. 6 S. R. 45 E. W. M., said lot extending 1370 ft. in length along said lode and embracing 18.87 acres more or less.

9. All that certain quartz lode mining claim known, located and recorded as the "Alta" and designated as lot No. 38, embracing a portion of sects. 27 and 28 in T. 6 S. R. 45 E. W. M., said lot extending 1300 ft. in length along said lode.

10. All that certain quartz lode mining claim known, located and recorded as the "Bruin," designated as lot No. 39, embracing a portion of sec. 27 in T. 6 S. R. 45 E. W. M., said lot extending 1300 ft. in length along said lode and embracing 16.87 acres more or less.

11. All that certain quartz lode mining claim known, located and recorded as the "Eagle" and designated as lot No. 41, embracing a portion of sec. 27, T. 6 S. R. 45 E. W. M., said lot extending 1500 ft. in length along said lode, final mineral entry 48 for the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of section 27 N. W. $\frac{1}{4}$ N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ section 34, T. 6 S. R. 45 E. W. M. and embracing 20.66 acres more or less.

12. All that certain quartz lode mining claim known, located and recorded as the "Greek," designated as lot No. 40, embracing a portion of section 27, T. 6 S. R. 45 E. W. M., said lot extending 1600 ft. in length along said lode, and designated as lot No. . . . final mineral entry No. 49 for the E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ section 34 E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ S. E. $\frac{1}{4}$ E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ section 27, T. 6 S. R. 45 E. W. M. and embracing 20.66 acres more or less.

13. All that certain quartz lode mining claim known, located and recorded as the "Annex Placer," designated as lot No. 42, embracing a portion of sec.

27 T. 6 S. R. 45 E. W. M., said claim embracing 6.73 acres.

14. All that certain quartz lode mining claim known, located and recorded as the "Motor," designated by the Surveyor General as lot No. 190, embracing a part of sects. 28 and 33 in T. 6 S. R. 45 E. W. M., certificate No. 155 and containing 3.92 acres more or less.

15. All that certain quartz lode mining claim known, located and recorded as the "Gore," designated by the Surveyor General as lot No. 320, embracing a part of sec. 28, T. 6 S. R. 45 E. W. M., certificate No. 154, containing 6.25 acres more or less.

16. All that certain quartz lode mining claim known, located and recorded as the "Last Chance" consolidated mining claim, consisting of all the divided north one-half of the "Last Chance" mine or mining claim and all of the "White Swan" mining claim, the location of said claim being of record in the records of Union County, Oregon, at Union, to which records reference is hereby made for a further description.

17. All that certain quartz lode mining claim consisting of the south one-half of the "Last Chance" quartz lode mining claim, being the original location of E. P. Howard and John Carey, and designated by the Surveyor General as lot No. 39, embracing a part of sec. 28, T. 6 S. R. 45 E. W. M., certificate No. 100 and containing 7.76 acres more or less.

18. All that certain quartz lode mining claim known, located and recorded as the "Moonshine,"

said mine being 400 ft. more or less in length by 600 ft. in width and lying between the "Maverick" fractional claim and the "Mayflower" quartz claim.

19. All that certain quartz mining claim or fractional quartz ledge, known, located and recorded as the "Maverick."

20. All that certain quartz lode mining claim known, located and recorded as the "Florence," described as follows: Commencing at the north end center monument of east side line of Union Mine and running thence northerly 300 ft. to the line of the "Prescott" mining claim, thence southwesterly 1500 ft. along line of said Prescott mining claim, thence 600 ft. southerly, thence 1500 ft. N. E. to the S. E. corner of the Union Mine, thence northerly 300 feet to place of beginning.

21. All that certain quartz lode mining claim known, located and recorded as the "Red Fox," and recorded in Book G. page 103, of Records of Quartz Locations, in the office of the clerk for Union County, Oregon, to which reference is hereby made for further description.

22. All that certain quartz lode mining claim known, located and recorded as the "Old Gray Fox," and recorded in Book G, page 103, of Records of Quartz Locations, in the office of the clerk for Union County, Oregon, to which reference is hereby made for further description.

23. All that certain quartz lode mining claim known, located and recorded as the "Dunn and Nor-

ton," said claim being located by Thomas H. Dunn and William Norton on May 4th, 1891, and recorded in Book F, page 302, of Records of Quartz Locations, in the office of the clerk for Union County, Oregon, May 12th, 1891, to which reference is hereby made for further description.

24. All that certain quartz lode mining claim known, located and recorded as the "Coup d'Or" and described as follows: Bounded on the south by the Main Elk Creek and the Spot Quartz Claim, on the west by the Hope Mill and Flagg Staff Mine and about one-fourth of a mile to the west from the Town of Cornucopia, being the same quartz lode mining claim granted by Lawrence Panter and Dominique Soldini, by Lawrence Panter, his attorney in fact, to John E. Searles, by deed recorded in Book 47 of Deeds, page 603, of Records of Union County, Oregon.

25. All that certain tunnel right or mining claim known as the "W. J. Clark Tunnel Claim," located by Wm. J. Clark on July 23rd, 1896, location notice whereof is duly recorded in Book F, page 409, of Records of Quartz Mining Claims of Union County, Oregon, to which reference is hereby made for further description.

26. All and singular that mill site known as the "Prescott Mill Site," consisting of five acres of non-mineral ground described as follows: Commencing at the S. E. corner of the Prescott Mining Claim and running thence southerly to Elk Creek, then up Elk Creek to east side line of Ohio Mining Claim, thence

northerly to S. W. corner of Prescott Claim, thence westerly along south end line of Prescott Claim to place of beginning, the location notice whereof was recorded in Book I of Mill Sites, page 126, Union County Records, to which reference is made for a further description.

27. All and singular that mill site known as the "Motor Mill Site," consisting of the triangular area of non-mineral land containing less than five acres, situated between the north end line of the "Motor" Mining Claim as officially surveyed, the west side of the Lone Star Claim and the east side line of the Lodi Mining Claim, the location notice whereof was recorded in Book I of Mill Sites, page 130, Union County Records, to which reference is hereby made for a further description.

28. All that certain piece or parcel of land more particularly described as follows: Beginning at a point on the half section line that is south 16.50 chains from the $\frac{1}{4}$ section corner on the north line of said section 3; thence south 7.15 chains and tracing said half section line; thence west 7 chains, thence north 7.15 chains, thence east 7 chains to the place of beginning. Containing 5 acres and being a portion of the E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of sec. 3, Tp. 7, S. R. 45 E. W. M., and known as lot No. 3, situated in Baker County (formerly Union County), Oregon, and more particularly described on page 292, Book J, of the Deeds Records of Union County, Oregon, reference to which is hereby made for further description, said five acres being the same property conveyed to the

estate of John E. Searles by Alexander McDonald by warranty deed dated February 14, 1902, and recorded on February 28th, 1902, in Book 39 of Deeds, page 604, of the Records of Baker County, Oregon.

29. All that certain water right located by W. J. Clark and John E. Searles on August 26th, 1895, the location notice whereof is recorded in Book E of Water Rights, page 70, Union County Records, to which reference is hereby made for further description.

30. All that certain water right of 200 inches of the south branch of Elk Creek, located July 3, 1895, by W. J. Clark and John E. Searles, the location notice whereof was recorded in Book E of Water Right, page 70, Union County Records, to which reference is hereby made for a further description.

31. All that certain water right of 1,000 inches of the waters of Pine Creek, the location notice whereof is recorded in Book E of Water Rights, page 74, Union County Records, to which reference is hereby made for a further description.

32. All those two certain water rights, the one of 100 inches of water running from the spring known as the Union Spring, situated, lying and being immediately under the Union Mine, and the other of 100 inches of water to be used and taken from Fall Creek, said water rights being adjoining and adjacent to said mining claims, which were located by W. J. Burdette and which were conveyed by J. R. Farrell and wife to John E. Searles and William J. Clark by deed dated July 3d, 1895, and which deed

was on July 14th, 1896, recorded in the office of the County Clerk of Union County, Oregon, in Book C of Mining Deeds, on page 634, to which deed reference is hereby made for further description.

33. The buildings, structures, erections and constructions and all improvements now or hereafter placed upon any of the hereinbefore described property with their fixtures.

TOGETHER with all the machinery for the reduction of ore, mining machinery, mining tools and equipment, ore of all kinds and personal property located at Cornucopia or Baker City, Oregon, or on the property known as the Cornucopia Mines of Oregon or elsewhere now held or acquired or hereafter held or acquired for use in connection with the said Cornucopia Mines, or the business thereof; and also all the easements, property, leasehold rights and things of whatsoever name or nature now or hereafter connected with or relating to the said Cornucopia Mines, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining and the reversion and reversions, remainder and remainders, and also all the estate, right, title and interest, property, possession, claims and demand whatsoever as well at law as in equity of the Cornucopia Mines of, in and to the same and any and every part thereof, with the appurtenances. The personal property and chattels above conveyed and transferred or intended so to be, now held or hereafter acquired, shall be deemed real estate for all the purposes of this indenture and shall

be held and taken to be fixtures and appurtenances of the said Cornucopia Mines and part thereof and are to be used, and in case of a sale hereunder, are to be sold therewith.

TO HAVE AND TO HOLD all and singular the aforesaid real and personal property, mines, mining rights, water rights, mining machinery and tools, property and appurtenances hereinbefore mentioned and described or intended so to be unto the Trustee, its successor or successors in the trust forever for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued under and secured by said mortgage or deed of trust, without regard to the time of the actual issue of said bonds, and for the enforcement of the payment of the said bonds and interest when payable according to the tenor, purport and effect of such bonds and coupons and to secure the performance and observance of and compliance with the covenants and conditions of said mortgage or deed of trust, without preference, priority or distinction as to lien or otherwise of one bond over any other bonds so that each and every bonds issued or to be issued under and by virtue of said mortgage or deed of trust shall have the same right, lien and privilege as every other bond issued or to be issued.

Plaintiff begs leave to produce upon the trial hereof the said mortgage or deed of trust and makes the same a part of its complaint, and prays that the same may be considered as though set forth at length herein and the contents thereof spread in full upon the face thereof.

VI. Plaintiff duly accepted the trust created in and by said mortgage, and in evidence of its acceptance thereof united in the execution of the same, and said mortgage was thereafter duly recorded in the office of the County Clerk and Recorder of Baker County, Oregon, where said mortgaged property was situated, on May 12th, 1905, in Book U, pages 488 to 518.

VII. That heretofore, to-wit, on or about the 1st day of April, 1906, the defendant The Mines Company, made default by neglecting and omitting to pay the interest mentioned in said bonds and coupons which became due and payable on said date amounting to \$9,000, and also, made default in the payment of the interest mentioned in said bonds and coupons which became due and payable respectively on the 1st day of October, 1906, amounting to \$9,000; the 1st day of April, 1907, amounting to \$9,000; the 1st day of October, 1907, amounting to \$9,000; the 1st day of April, 1908, amounting to \$9,000; the 1st day of October, 1908, amounting to \$9,000; the 1st day of April, 1909, amounting to \$9,000; the 1st day of October, 1909, amounting to \$9,000; the 1st day of April, 1910, amounting to \$9,000; the 1st day of October, 1910, amounting to \$9,000; the 1st day of April, 1911, amounting to \$9,000; although payment of all or some part of said installment of interest and coupons was duly demanded when the same became due. The total amount of such installments of interest was Ninety-nine Thousand (\$99,000) Dollars and the said defendant The Mines Company did not pay and has not paid or caused to be paid any of said interest or

the said coupons when they became due, and has not paid or satisfied or caused to be paid or satisfied, nor has any other person paid or satisfied said semi-annual installments of interest on said bonds or any part thereof, as aforesaid, in any manner, though payment thereof was duly demanded; and said The Mines Company has not furnished or provided or placed at the office of the Hamilton Trust Company, in the Borough of Brooklyn, City and State of New York, or elsewhere, any sum of money to pay said interest and interest coupons due as aforesaid, though the same were payable at the office of said plaintiff and thereby default has been made by the defendant The Mines Company in the performance of the conditions of its said mortgage dated April 1st, 1905; and that default in payment after demand duly made occurred more than six months since.

VIII. That heretofore, to-wit, on or about the 1st day of April, 1911, the defendant, The Mines Company, made default in the payment of the principal sum mentioned in said bonds which became due and payable according to the terms thereof and of said mortgage or deed of trust on said date, the total amount of which is \$300,000, and the said defendant The Mines Company did not pay and has not paid or caused to be paid the said principal sum or any part thereof, though payment thereof was duly demanded and said defendant The Mines Company has not furnished or provided or placed at the office of the plaintiff, Hamilton Trust Company in the Borough of Brooklyn, City and State of New York, or elsewhere, any sums of money to pay said principal

sum due as aforesaid, though the same was payable at the office of plaintiff aforesaid, and thereby default has been made by the defendant The Mines Company in the performance of the conditions of its said mortgage, dated April 1st, 1905.

IX. That in and by said mortgage, dated April 1st, 1905, of the defendant The Mines Company, it was provided that until default should have been made by it in the performance of any of the covenants and agreements in the said mortgage, and until such default should have continued for a period of six months, the mortgagors, or their assigns, the defendant The Mines Company, should be suffered and permitted to retain actual possession and manage, operate and use the property described therein and every part thereof and the appurtenances thereunto belonging, and to collect and receive and take the tolls, earnings, rents, issues, profits and other income thereof, and after paying the expenses of operating the mortgaged property and for necessary repairs, replacements, taxes and rentals out of said income, apply the balance to the payment of interest upon the bonds issued, and to the payment on account of the sinking fund therein provided for, and to such purposes as The Mines Company may deem proper.

It was further provided in said mortgage that in case default should be made in the payment of the said annual interest and of any of said coupons upon any of the bonds issued by the said Mines Company, secured by said mortgage, and such default should continue for six months or should The Mines Com-

pany make default in the payment of the principal of any of said bonds, then upon the request in writing of a majority in amount of the holders of the bonds secured by said mortgage and by notice in writing to The Mines Company, that thereupon the principal of all the bonds secured thereby should immediately become due and payable, anything contained in said bonds or said mortgage or deed of trust to the contrary notwithstanding.

It was further provided in and by said mortgage that the remedies provided therein were cumulative to the ordinary remedy of foreclosure in the courts, and the trustee might in its discretion and should, upon the written request of a majority in value of the outstanding and unpaid bonds which might have been issued thereunder, and whenever entitled so to do by the terms of said mortgage, institute proceedings to foreclose said mortgage.

X. That heretofore and on the 16th day of November, 1911, and more than six months after default of payment of principal and interest, plaintiff was requested in writing by a majority of the holders of the bonds thereby secured and then outstanding under said mortgage or deed of trust, to foreclose at law or in equity the said mortgage for failure of The Mines Company to pay the principal of the said bonds which became due and payable April 1st, 1911, and interest on the coupons due October 1st, 1905; April 1st, 1906; October 1st, 1906; April 1st, 1907; October 1st, 1907; April 1st, 1908; October 1st, 1908; April 1st, 1909; October 1st, 1909; April 1st, 1910;

October 1st, 1910; and April 1st, 1911; the said principal and interest coupons having been due and payable and having been presented at the place where the same were made payable, and payment of the principal and interest therein specified having been demanded, and to exercise its option to declare the principal of all of said bonds secured by said mortgage or deed of trust immediately due and payable, and forthwith to institute proceedings to foreclose said mortgage or deed of trust, and to secure the appointment by a court of competent jurisdiction, of a receiver of the property conveyed by said mortgage or deed of trust, and of the earnings, incomes, rents, issues and profits thereof.

Pursuant to the provisions of said mortgage made and executed by defendant, The Mines Company, to the plaintiff, and the waivers and requests aforesaid, plaintiff has elected to and does hereby declare the principal of all the bonds secured by said mortgage immediately due and payable, and it alleges that the principal of all said bonds and each of them has now become and is now due and payable as of the date of this bill of complaint.

XI. Plaintiff is informed and believes that the security so as aforesaid given to it for the payment of said bonds and the interest thereon is, in the present condition and situation of the mortgaged premises, inadequate to secure the payment of the said bonds with interest thereon, according to their tenor and effect.

Plaintiff further alleges, on information and belief, that the defendant The Mines Company is

wholly insolvent and unable to pay its just debts and liabilities in full, and that the mortgaged premises and property set forth in the said mortgage hereinabove recited, constitute one single plant with its appurtenances, property and franchises, and should not be dismembered or sold in sections or portions, and that the value thereof in sections or portions is and will be much less than the value thereof as a whole, and that a sale of the mortgaged premises, in separate parcels, could not, as plaintiff is informed and believes, be had without a sacrifice thereof and great loss to the plaintiff and the holders and owners of the bonds secured by the mortgage sought to be foreclosed herein.

XII. Plaintiff further alleges that no action other than this has been brought to recover any part of the mortgage debt hereinbefore set forth.

XIII. That the defendants above named and each of them have or claim to have some interest in or lien upon the said mortgaged premises, which interest or lien, if any, is subject and subordinate to the lien of the mortgage or deed of trust.

WHEREFORE plaintiff demands judgment :

1. That the above mortgage, dated April 1st, 1905, executed by defendant The Mines Company, may be foreclosed and that said mortgage may be decreed to be a lien upon the premises and property thereby granted and conveyed, and on all property connected with and appertaining to said mortgaged property.

2. That the defendant The Mines Company be decreed to pay the amount due upon the bonds secured by said mortgage, together with all costs and expenses and equitable charges in that behalf incurred and expended, and in default thereof that the defendants and each and all of them herein, and all persons claiming or to claim under them, or either or any of them, may be forever barred and foreclosed of and from all and every right and equity of redemption and claim of, in and to the said mortgaged property and every part and parcel thereof.

3. That all and singular the mortgaged property and premises, with the appurtenances, effects, incidents, additions and increase thereof, with all the rights, immunities, privileges and franchises mentioned in said mortgage hereinbefore described, may be sold in one parcel under final judgment or decree of this court.

4. That an accounting may be had wherein shall be ascertained and determined the amount due upon said bonds, and what allowances should equitably be made to the plaintiff as trustee, and that out of the moneys arising from the sale of said property under said decree, and after payment of the costs and expenses of sale and any allowance which may be made to the plaintiff and its attorneys and counsel, and any prior lien or incumbrance on said mortgaged premises, the amount of the balance may be applied to the satisfaction of the entire sum secured by said mortgage and paid over to the plaintiff as trustee, or to the holders of said bonds and coupons.

5. That the defendant The Mines Company, may be adjudged to be liable and may be required to pay to the plaintiff the amount of any deficiency which may remain after the application of such balance in the manner aforesaid.

6. That a receiver may be appointed by this court according to the course and practice of this court, with the usual powers of receivers in like cases. of all the mortgaged property and premises and franchises and the rents, incomes and profits thereof.

7. That an injunction may issue restraining the defendants and each of them and all other persons from interfering with, selling or disposing of any of said mortgaged property, and from taking possession of or attempting to sell, either by judicial process or otherwise, the said property or any part thereof; and that this plaintiff may have its costs, allowance and compensation for its services and expenses as trustee: and for such other and further relief, judgment or decree as to the court may seem just and equitable.

WILLIAMS, WOOD &
LINTHICUM,

ISAAC D. HUNT,

Attorneys for Plaintiff.

Office and Post Office Address:

State of New York,
City of New York,
Borough of Brooklyn,
County of Kings.—ss.

George Hadden being duly sworn, deposes and says, that he is the Vice President of the HAMILTON TRUST COMPANY, the plaintiff in the above entitled action; that he has read the foregoing Complaint and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the reason why this affidavit is not made by plaintiff is because plaintiff is a corporation; that deponent is an officer of said corporation, to-wit, the Vice President thereof.

Sworn to before me this 23rd day of November, 1911.

(Signed) GEO. HADDEN.

(L. S.) JOS. C. HECKER, Jr.,
Notary Public, Kings Co.

Filed December 5th, 1911.

G. H. MARSH, Clerk.

And afterwards, to-wit, on the 7th day of December, 1911, there was issued out of said court in said cause, a SUBPOENA ad RESPONDENDUM in words and figures, as follows, to-wit:

Subpoena Ad Respondendum.

I hereby certify and return that on the 5th day of December, 1911, I received the within writ and that after diligent search, I am unable to find the within named defendant, S. W. Holmes, (Defendant Holmes reported to be out of District), within my district.

LESLIE M. SCOTT.

Return on Service of Writ.

United States of America,

District of Oregon.—ss.

I hereby certify and return that I served the annexed Subpoena ad Respondendum on the therein named The Cornucopia Mines Company of Oregon, a Corporation, by handing to and leaving a true and correct copy thereof, together with the Bill of Complaint, with Emmett Callahan, who is statutory agent and attorney in fact to accept service for the above corporation in the State of Oregon, personally at Portland, in said district on the 5th day of December, A. D. 1911.

LESLIE M. SCOTT,

U. S. Marshal.

By LEONARD BECKER,

Deputy.

Return on Service of Writ.

United States of America,
District of Oregon.—ss.

I hereby certify and return that I served the annexed Supoena ad Respondendum on the therein named Valentine Laubenheimer by handing to and leaving a true and correct copy thereof, together with the Bill of Complaint with him personally at Portland in said District on the 7th day of December, A. D. 1911.

LESLIE M. SCOTT,
U. S. Marshal.

By A. C. PHELPS,
Deputy.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA.

*To The Cornucopia Mines Company of Oregon, a
corporation, and Valentine Laubenheimer and S.
W. Holmes,*

GREETING:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the Court Room thereof, in the City of Portland, in said District, on the first Monday of January next, which will be the 1st day of January, A. D. 1912, to answer the exigency of a Bill of Com-

plaint exhibited and filed against you in our said Court, wherein Hamilton Trust Company is complainant, and you are defendants, and further to do and receive what our said CIRCUIT COURT shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to Command you, the Marshal of said District, or your Deputy, to make due service of this our writ of Subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 5th day of December in the year of our Lord, One Thousand Nine Hundred and Eleven, and of the Independence of the United States, the One Hundred and Thirty-sixth.

G. H. MARSH,
Clerk.

(Seal)

Memorandum Pursuant to Equity Rule No. 12 of the Supreme Court of the United States:

The Defendant is to enter his appearance in the above entitled suit in the Office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the Complainant's Bill therein may be taken pro confesso.

Returned and Filed December 11th, 1911.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 7th day of December, 1911, there was duly filed in said court, in said cause, a MOTION FOR THE APPOINTMENT OF A RECEIVER, in words and figures as follows, to-wit:

Motion for Appointment of Receiver.

Comes now C. E. S. Wood of Attorneys for the Complainant above named and here, now moves the Court for an order directing that receiver be appointed by this Court, according to the cause and practice of this Court, with the usual powers of receivers in like cases, of all the mortgaged property described in the Bill of Complaint herein and also the premises, franchises, rents increases and profits thereof. This motion is based on the Bill of Complaint, affidavit of Emmett Callahan and the papers and files in the above entitled matter.

C. E. S. WOOD,
of Attorneys for Complainant.

Filed December 7th, 1911.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 7th day of December, 1911, there was duly filed in said Court, in said cause, an Affidavit of Emmett Callahan, in words and figures as follows, to-wit:

Affidavit of Emmett Callahan.

United States of America,
State of Oregon,
Multnomah County.—ss.

I, Emmett Callahan, being first sworn according to law depose and say: That for about eight years last past I have been and so continue to be the general agent and attorney of the Cornucopia Mines Company of Oregon, one of the respondents above named; that within the past eight years I have frequently visited the mines, stamp mill and workings in the development of the mining claims and operating works of said Cornucopia Mines Company of Oregon, situate near the Town of Cornucopia, Baker County, Oregon; that I am familiar with the workings, operation and development of the mines and mining property of said Cornucopia Mines Company of Oregon, respondent; that for about eighteen years last past I have been engaged in personally and as an attorney for various mining companies in their operation and development in the states of California, Colorado, Montana and Oregon; that an action is now pending in this Court wherein the above named corporation is complainant against the above named respondents for the purpose of foreclosing mortgage bond against said respondent corporation, the Cor-

Cornucopia Mines Company of Oregon, for the purpose of satisfying the mortgage upon the premises described in the above named complainant's bill of complaint against the above named respondents for the sum of Three Hundred Thousand Dollars and the accruing interest stipulated in said mortgage; that said complainant in its said action to foreclose said mortgage against the respondents asked for the appointment of a receiver and the granting of an injunction therein; that it is necessary that said mines should continue in operation and development; that the said mines were closed down and ceased to be operated and developed great irreparable injury and loss would occur by said mines being closed down and not operated; that if said mines are not continued in operation and development the stamp mill, electric power plant, engines, pumps and other machinery will greatly deteriorate in value and loss; that the tunnels, shafts, winzes, stopes and other underground openings and workings of said Cornucopia Mining claims and mines would cave in and be greatly damaged and great loss follow by the action of the elements and flooding of said openings in said mines and mining claims filling up with water deteriorating, destroying and damaging said mines and mining claims, its buildings and operating plants in a reasonably estimated sum of at least from forty to one hundred thousand dollars; that further said Cornucopia Mines Company of Oregon, one of the respondents above named, executed and entered into a lease of its said mines and mining claims as described in complain-

ant's bill of complaint with Robert M. Betts for the operation and development of said mines and mining claims for the period of one year commencing on or about the first day of November, 1911, and said mines are now being operated and developed by said Robert M. Betts as lessee under said lease.

EMMETT CALLAHAN.

Subscribed and sworn to before me this 6th day of December, 1911.

ISAAC D. HUNT,

Notary Public in and for Oregon.

(Notarial Seal)

Filed December 7th, 1911.

G. H. MARSH,

Clerk.

And afterwards, to-wit, on Friday, the 7th day of December, 1911, the same being the 57th Judicial day of the regular October, 1911, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

Order to Show Cause Why Receiver Should Not Be Appointed.

Return on Service of Writ.

United States of America,

District of Oregon.—ss.

I hereby certify and return that I served the Order on the therein named Valentine Laubenheimer

by handing to and leaving a true and correct copy thereof with him personally at Portland in said District on the 9th day of December, A. D. 1911.

LESLIE M. SCOTT,

U. S. Marshal.

By A. C. PHELPS,

Deputy.

Now at this day the above entitled cause came regularly on to be heard upon the motion of the Complainant for the appointment of a receiver herein and Mr. C. E. S. Wood appeared of Counsel for Complainant:

WHEREUPON, IT IS HEREBY ORDERED, that the above named respondents do appear before this Court, at the United States Court Room in Portland, in said district, on the 21st day of December, 1911, if it be a court day, or else on the court day next following, at 10 o'clock A. M. of said day, then and there to show cause, if any, why a receiver should not be appointed herein according to the prayer of the bill in that behalf.

AND IT IS FURTHER ORDERED, that in the meantime and until the further order of the Court herein, the said respondents Valentine Laubenheimer and S. W. Holmes, their agents and servants, be and they hereby are severally restrained from issuing or causing to be issued any execution or executions upon the judgments set out in said bill.

Done in open Court this 7th day of December, 1911.

CHAS. E. WOLVERTON,

Judge.

Due service of the within order by certified copy as prescribed by law is hereby admitted at Portland, Oregon, December 7th, 1911.

EMMETT CALLAHAN,
Attorney for Respondent.

Filed December 7th, 1911.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 12th day of December, 1911, there was duly filed in said Court, and cause a Petition for order for service on non-resident defendant, in words and figures as follows, to-wit:

Petition for Service on Non-Resident Defendant.

To the Honorable Judges of the Circuit Court of the United States in and for the District of Oregon:

Comes now the Complainant, Hamilton Trust Company, above named and respectfully shows that this is a suit brought to enforce an equitable lien upon, or claim to, certain real and personal property described in complainant's bill of complaint herein, which said real property is situated within the district of Oregon, where the above entitled suit has been brought, and that respondent, S. W. Holmes, is a citizen and resident and inhabitant of the State of Washington, and resides in the Town of Ostrander in said state, and cannot be found within the district of Oregon.

That respondent, S. W. Holmes, has not voluntarily appeared herein, and that this is a cause which

comes within Section 73 of United States Revised Statutes as amended by the act of Congress of March 3d, 1875, Chapter 137, Section 8 (18 Statutes at Large 472).

And your petitioner respectfully prays your honorable court to make an order directing said absent respondent, S. W. Holmes, to appear, plead, answer or demur by a day certain to be designated, and directing that said order shall be served upon said absent respondent, S. W. Holmes, in the Town of Ostrander, in the State of Washington, or wherever he may be found.

HAMILTON TRUST COMPANY,
Complainant.

By C. E. S. WOOD,
of its Attorneys.

United States of America,
State and District of Oregon,
County of Multnomah.—ss.

I, C. E. S. Wood, being first duly sworn, depose and say that I am one of the solicitors for the complainant in the within entitled suit; that I have read the foregoing petition and know the contents thereof, and that the same is true to my own knowledge, except as to the matters therein stated to be on information and belief and as to those matters I believe it to be true; that I make this verification because the

complainant is a corporation and is not now a resident or inhabitant of the State and District of Oregon.

C. E. S. WOOD.

Subscribed and sworn to before me this 12th day of December, 1911.

H. H. PARKER,
(Seal) Notary Public in and for Oregon.

Filed December 12th, 1911.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on Tuesday, the 12th day of December, 1911, the same being the 61st Judicial day of the regular October, 1911, term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order for Service on Non-Resident Defendant.

Now at this time the above entitled cause came regularly on to be heard upon petition of the Complainant for an order directing service upon respondent, S. W. Holmes, complainant, appearing by C. E. S. Wood of Counsel for the complainant, and the Court having fully considered said petition and being fully advised with reference thereto, and it appearing to the court from said petition and from the bill of complaint on file herein that this is a suit to enforce an equitable claim to or lien upon certain real and personal property described in complainant's bill of complaint herein, which said property is situated

within the District of Oregon, where the above entitled suit has been brought; and

It further appearing that the respondent, S. W. Holmes, is not an inhabitant of the State of Oregon, but is a citizen and resident and inhabitant of the State of Washington and resides at the Town of Ostrander in said state, and that he has not voluntarily appeared herein, and that this is a cause which comes within Section 73 of United States Revised Statutes as amended by the act of Congress of March 3d, 1875, Chapter 137, Section 8 (18 Statutes at Large 472), and that it is proper for this Court in accordance with said act of Congress as amended, to make an order directing the said absent respondent to appear, plead, answer or demur, by a day certain to be designated, and to direct the service of said order upon said respondent, S. W. Holmes, in person, within the State of Washington or wherever he may be found.

WHEREFORE, it is hereby ordered that S. W. Holmes, one of the respondents, be, and he hereby is directed to appear, plead, answer or demur to said bill of complaint of said complainant in the above entitled matter on or before the rule day of January, 1912, and that a certified copy of this order and the order to show cause on application for receiver herein, together with a copy of the bill of complaint, certified to be such by one of the solicitors of the complainant be duly served upon said respondent wherever he may be found on or before the 16th day of December, 1911, by the United States Marshal in and

for the Western District of Washington if found within said district or by the Marshal of that district or that state or territory of the United States wherever the said respondent may be found, if not found within the Western District of the State of Washington.

Dated this 12th day of December, 1911.

CHAS. E. WOLVERTON,
Judge.

Filed December 12th, 1911.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on Thursday, the 21st day of December, 1911, the same being the 69th Judicial day of regular October, 1911, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Appointing Receiver.

Now on this 21st day of December, 1911, comes the Complainant, the Hamilton Trust Company, by Williams, Wood & Linthicum, its solicitors, and it appearing that respondent, The Cornucopia Mines Company of Oregon and respondent Valentine Laubenheimer have been regularly served with the order to show cause herein, and it appearing that respondent S. W. Holmes has very little interest herein, and that the application for receiver herein is not resisted by any of said respondents, and the Court

having been fully advised in the premises, it is now hereby:

ORDERED, ADJUDGED AND DECREED that Robert M. Betts be and he hereby is appointed receiver of all and singular the real and personal property of the said The Cornucopia Mines Company of Oregon, covered by the mortgage sought to be foreclosed herein, and that said receiver be, and he hereby is, authorized and directed to take immediate possession of all and singular the said real and personal property, wherever situated or found, and to continue the operation of said mining and other property and every part and portion thereof, as heretofore operated, and to preserve the said property in proper condition and keep the same in repair, and to employ such persons and make such payments and disbursements as may be needful and proper in doing so.

IT IS FURTHER ORDERED that said receiver, within the next ten days, file with the clerk of this court, a proper bond with such surety or sureties to be approved by a judge of this court in the penal sum of \$2,500.00, conditioned for the faithful discharge of their duties, and to account for all the funds coming into his hands according to the order of this court.

Each and every of the officers, directors, agents, or employees of The Cornucopia Mines Company of Oregon, and all other persons or corporations, are hereby commanded to turn over and deliver to said receiver any and all of said property into his

hands, or into his control, and such and every of such officers, directors, agents, employees, persons or corporations, are hereby commanded to obey and conform to such orders as may be given to them from time to time by such receiver, in conducting the operations of said property and in discharging his duties as such receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that out of the moneys that shall come into the hands of said receiver from the operation of said property or otherwise he shall pay the necessary expenses incident to the operation of said property and hold the remainder, if any there be, subject to the order of the court herein, and this appointment is made on condition that said Robert M. Betts shall not receive any compensation for his services as such receiver from any of the parties herein, and that he obey the order of the court as made from time to time.

Done in open Court this 21st day of December, 1911.

CHAS. E. WOLVERTON,
Judge.

Filed December 21st, 1911.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 23rd day of December, 1911, there was duly filed in said Court, and caused, a Return of Service of Order for Non-Resident Defendant to appear and plead, in words and figures, as follows, to-wit:

Return on Order.

United States of America,
State of Washington,
County of Pierce.—ss.

I, Joseph R. H. Jacoby, United States Marshal in and for the Western District of Washington, hereby certify that I served the order of the above entitled court made and entered on the 12th day of December, 1911, requiring the respondent S. W. Holmes, to appear, plead, answer or demur to the bill of complaint by the rule day of January, 1912, and also serve the order to show cause why a receiver should not be appointed, and also served the bill of complaint in the above entitled cause upon the above named S. W. Holmes, by delivery to him on the 14th day of December, 1911, personally, and in person, true copies of each of said orders certified to be such by the clerk of the above entitled court, and a true copy of said bill of complaint, certified to be such by Isaac D. Hunt, one of the solicitors for the complainant herein.

JOSEPH R. H. JACOBY,
United States Marshall in and for the
Western District of Washington.

By FRANK ALBERT, Jr.,
Deputy.

Tacoma, Wash., Dec. 15th, 1911.

Marshal's fees \$11.50.

Filed December 23rd, 1911.

G. H. MARSH,
Clerk.

And afterwards, to-wit, on the 2nd day of January, 1912, there was duly filed in the District Court of the United States for the District of Oregon, in said cause, a Bond of Receiver, in words and figures as follows, to-wit:

Bond of Receiver.

KNOW ALL MEN BY THESE PRESENTS, that we, Robert M. Betts, as principal, and National Surety Company, a corporation, as surety, parties of the first part, are held and firmly bound unto the said The Cornucopia Mines Company of Oregon, Valentine Laubenheimer and S. W. Holmes, respondents in the above entitled action, parties of the second part, in the just and full sum of Two Thousand Five Hundred Dollars (\$2,500), for the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, and each of our successors, heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 21st day of December, 1911, upon conditions as follows:

WHEREAS, the said Robert M. Betts has been appointed by the above entitled court to act as receiver of all the real and personal property of said Cornucopia Mines Company of Oregon, to man-

age and operate the same as according to the order of said court;

NOW, THEREFORE, if the said Robert M. Betts shall well and faithfully discharge all of the duties incumbent upon him as such receiver, and account for all the funds coming into his hands as such receiver according to the order of this court, then this obligation to be null and void; otherwise to be and remain in full force and effect.

ROB'T M. BETTS, (Seal)

NATIONAL SURETY COMPANY,
(Seal) By HARRISON ALLEN,
Resident Vice-President.

NATIONAL SURETY COMPANY,
(Seal, National) Attest JAS. McI. WOOD,
(Surety Co.) Resident Secretary.

Filed January 2nd, 1912.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 22nd day of January, 1912, there was duly filed in said Court, and cause a Demurrer to the Bill of Complaint, in words and figures as follows, to-wit:

Demurrer.

The demurrer of The Cornucopia Mines Company of Oregon, a corporation, respondent, to the
BILL OF COMPLAINT.

And now comes the defendant The Cornucopia Mines Company of Oregon, a corporation, and not confessing any of the matters in the BILL to be true, demurs to the bill herein filed and says the same does not state any matter of equity entitling Complaint to the relief prayed for, nor are the facts as stated sufficient to entitle Complainant to any relief against this defendant.

WHEREFORE defendant prays the judgment of this Court whether it shall further answer, and that it be dismissed with its costs.

EMMETT CALLAHAN,
Attorney for Respondent Cornucopia
Mines Company of Oregon, a corporation.

I, Emmett Callahan, solicitor for respondent in the above entitled cause, do hereby certify that the foregoing demurrer, in my opinion, is well founded in law.

EMMETT CALLAHAN,
Solicitor for Respondent.

United States of America,
State of Oregon, Baker County.—ss.

I, Emmett Callahan, the attorney and general agent for respondent within the State of Oregon; and the only authorized agent and attorney, or other officer within Oregon authorized to represent said

respondent herein, being duly sworn, do say that the foregoing demurrer is not interposed for delay.

EMMETT CALLAHAN.

Subscribed and sworn to before me this 19th day of January, 1912.

(Seal) O. B. MOUNT,
Notary Public for Oregon.

State of Oregon,
County of Multnomah.—ss.

Due service of the within demurrer is hereby accepted in Multnomah County, Oregon, this 22nd day of January, 1912, by receiving a copy thereof, duly certified to as such by Emmett Callahan, attorney for respondent Cornucopia Mines Company.

C. E. S. WOOD,
of Attorneys for Complainant.

Filed January 22nd, 1912. .

A. M. CANNON,
Clerk.

And afterwards, to-wit, on Monday, the 29th day of January, 1912, the same being the 71st Judicial day of the regular November, 1911, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Continuing Hearing on Demurrer.

This cause came on regularly at this time upon Demurrer and thereupon there being no appearance, it is ordered that hearing on Demurrer be and the same hereby is continued until Monday, February 5th, 1912.

And afterwards, to-wit, on Monday, the 5th day of February, 1912, the same being the 77th Judicial day of the regular November, 1911, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Decree Pro Confesso.

Now at this time comes on to be heard the demurrer heretofore interposed by the defendant Cornucopia Mines Company, and duly filed January 22nd, 1912, Mr. C. E. S. Wood appearing for the plaintiff Hamilton Trust Company, and Mr. Emmett Callahan appearing for the defendant Cornucopia Mines Company.

Whereupon the said defendant Cornucopia Mines Company submitted that the said demurrer should be overruled; and

IT IS ORDERED, ADJUDGED AND DECREED that said demurrer be and is hereby overruled; and that defendant Cornucopia Mines Company have leave to plead further.

Whereupon the said defendant Cornucopia Mines Company, by its attorney, refused to plead further, and confessed the bill and consented that a decree might be taken by the plaintiff, Hamilton Trust Company, against the defendant Cornucopia Mines Company, as prayed for in the bill.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that as against the defendant Cornucopia Mines Company, the bill be taken as confessed and that a decree be entered for the foreclosure of the mortgage lien of the plaintiff against the property of the defendant, Cornucopia Mines Company, and for such other relief as may be equitable in the premises, as prayed for in the bill.

And afterwards, to-wit, on Monday, the 12th day of February, 1912, the same being the 83rd Judicial day of the regular November, 1911, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Continuing Demurrer.

Now, at this time, demurrer called and ordered continued until Monday, February, 19th, 1912.

And afterwards, to-wit, on Friday, the 19th day of February, 1912, the same being the 89th Judicial day of the regular November, 1911, term of said

Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Overruling Demurrer.

Now, at this time, the demurrer herein came on regularly for hearing and thereupon said demurrer being called and there being no appearance and it appearing that this was the third call of said demurrer, it is ordered that said demurrer be and the same is hereby overruled.

And afterwards, to-wit, on Saturday, the 2nd day of March, 1912, the same being the 100th Judicial day of the regular November, 1911, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Decree Pro Confesso.

Now on this day of March, 1912, comes the complainant, Hamilton Trust Company, by Mr. C. E. S. Wood, of counsel, and moves the Court for a decree pro confesso herein against respondents Valentine Laubenheimer and S. W. Holmes upon the bill of complaint herein, and it appearing to the Court that the subpoena issued in this cause was duly and legally served upon respondent Valentine Laubenheimer on the 7th day of December, 1911, and upon respondent S. W. Holmes on the 14th day of December, 1911, by delivering to and leaving with each of said respondents personally on said dates an

attested copy of said subpoena, as shown by the returns of said service on file herein, and it appearing that said service was made on each of said respondents more than twenty days before the rule day of February, 1912, and it further appearing that said respondents, and each of them, have not appeared in this suit, either in person or by a solicitor, and that neither of said respondents has appeared in this suit at all, and both of said respondents have failed to answer or otherwise plead herein within the time allowed by law and the rules of this Court:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said bill of complaint herein be and the same hereby is, taken as confessed by the said respondents Valentine Laubenheimer and S. W. Holmes, and each of them.

And afterwards, to-wit, on Tuesday, the 30th day of April, 1912, the same being the 50th Judicial day the regular March, 1912, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Final Decree.

Now, on the 30th day of April, 1912, the above entitled cause came regularly to be heard at this term upon the bill of complaint herein, the decrees heretofore entered in this cause on February 5th, 1912, and March 2nd, 1912, taking said bill as con-

fessed by each and all of said respondents herein, and the motion of Mr. C. E. S. Wood, of counsel for complainant, for a final decree herein according to the prayer of said bill.

And it appearing that the bill in equity in the above entitled cause as filed in this Court on the 5th day of December, 1911, and that a subpoena was issued and duly served on all of the respondents herein; and that orders taking the said bill are confesso against said defendants were duly entered in this case on the 5th day of February, 1912, and on the 2nd day of March, 1912, in the order book, and that no proceedings have been had or taken by said respondents or any or either of them since either of said orders were entered, and more than thirty days having elapsed since the entering of said orders taking said bill pro confesso as aforesaid;

Now therefore, upon consideration of the said bill, and the evidence produced at the hearing thereof, and by reason of the default of said respondents, Valentine Laubenheimer and S. W. Holmes and respondent, The Cornucopia Mines Company, having consented that as against it, the bill be taken as confessed and that a decree be entered according to the prayer of said bill, it is by the Court in consideration thereof;

Ordered, adjudged and decreed, that on or about the first day of April, 1905, the respondent, The Cornucopia Mines Company of Oregon, a corporation, made and executed its certain bonds, wherein and whereby it promised to pay to the holder, or

holders thereof, on the first day of April, 1911, the sum of Three Hundred Thousand Dollars (\$300,000), with interest thereon from the first day of October, 1905, at the rate of six per cent (6%) per annum, payable semi-annually on the first day of April and on the first day of October in each year, and that all of said bonds have been duly issued, negotiated and sold, and all of the same are now outstanding and valid obligations of the respondent, The Cornucopia Mines Company, and for the purpose of securing the payment of the principal and interest of said bonds and the coupons thereto annexed and all other sums thereby to come due, made, executed and delivered to the plaintiff as set forth in the bill of complaint herein, its certain mortgage or deed of trust, bearing date the first day of April, 1905, wherein and whereby it granted, bargained, sold, released, conveyed, assigned, transferred and set over unto the complainant as trustee, all and singular the water rights, flumes, electric plant, mines, mining claims, equipment and all other property then held or acquired or thereafter held or acquired, and also all the easements, property, leasehold rights, and things of whatsoever name or nature then owned by the Cornucopia Mines Company, a corporation, or which might be thereafter acquired by it, the said property then in existence being specifically described in said mortgage or deed of trust as follows; all and singular, the following mines, mining claims, equipment and properties, to-wit:

For a description of the property foreclosed by this decree, see Bill of Complaint, pages ... to

That in and by the terms of said mortgage, said respondent covenanted and agreed to pay to the holder of any bond issued under and secured by said mortgage, the principal and interest accruing thereon, promptly as the same became due and also covenanted to pay all taxes and assessments, liens or charges, that might be levied or assessed upon the property covered by said mortgage, so that said mortgage should be kept a first lien upon all of said property until the obligations secured by said mortgage should be paid in full and said respondent The Cornucopia Mines Company, a corporation, thereby further covenanted and agreed that if it should fail to pay any of said sums of money as specified, or in any other respect should fail to comply with any of the said covenants the complainant might, at any time after the expiration of the time named in the mortgage, proceed to foreclose said mortgage to compel payment to be made of the full amount due and payable; and that in and by the terms of said mortgage it was further expressly agreed that should said respondent fail to make payment of any taxes or other charges payable by it, or suffer the property covered thereby to become subject to any lien or incumbrance having precedence of said mortgage, the complainant might at its option make payment thereof, and the amount so paid with interest at six per cent (6%) per annum shall be added to and become a part of the debt secured by said mortgage.

That complainant duly accepted the trust created in and by said mortgage, and in evidence of such acceptance joined in the execution of the same and said mortgage was thereafter on May 12th, 1905, duly filed for record in the offices of the County Clerk and Recorder for Baker County, Oregon, and recorded in Book U of Mortgages at pages 488 to 518, Mortgage Records of said county.

That no payment has been made on said bonds or any of them or upon said mortgage, although such payment was demanded when due and that there is now due and owing to the complainant as trustee from said respondent, The Cornucopia Mines Company of Oregon, on account thereof, said sum of Three Hundred Thousand Dollars (\$300,000), with interest thereon at the rate of six per cent per annum, payable semi-annually, from the first day of October, 1905, and the further sum of One Thousand One Hundred and Ninety-Two Dollars and Ninety-Three Cents (\$1,192.93), taxes paid by the complainant, as provided by the terms of said mortgage upon the property covered thereby, with interest thereon from the 15th day of March, 1912, the date of such payment, at the rate of six per cent (6%) per annum, and the further sum of Ten Thousand Dollars (\$10,000.00), which is by the Court adjudged to be a reasonable sum to be allowed as attorneys' fee for the benefit of the complainant herein.

That on the 16th day of November, 1911, and more than six months after default of payment of principal and interest, complainant was requested in

writing by a majority in amount of the holders of the bonds thereby secured, and then outstanding under said mortgage or deed of trust, to foreclose said mortgage for failure of The Cornucopia Mines Company, a corporation, to pay the amounts due upon said bonds and mortgage as hereinbefore stated, and to exercise its option to declare all of said sums immediately due and payable, and forthwith to institute proceedings to foreclose said mortgage.

That by order of the Court made and entered herein on the 21st day of December, 1911, Robert M. Betts was appointed receiver of all the property of said Cornucopia Mines Company, of Oregon, covered by said mortgage, and he has ever since continued to discharge his duties as such receiver.

That the mortgaged premises and property covered by said mortgage, constitute one single plant with its appurtenances, property and franchises, and the value thereof in sections or portions is and will be much less than the value thereof as a whole, and said property should not be dismembered or sold in sections or portions.

It is further ordered, adjudged and decreed that said complainant do have and recover of and from said respondent The Cornucopia Mines Company of Oregon the said sum of \$422,940.00, being the principal of said mortgage and interest as therein provided, and the said further sum of \$10,000.00, attorneys' fees, together with its costs and disbursements herein to be taxed, and that in default of such pay-

ment by said respondent, or by someone in its behalf, all of said mortgaged property hereinbefore described and all the right, title, interest of said respondent in and to the said property described in said mortgage or deed of trust, or which has since the date thereof been acquired by it, or the said receiver, or which may hereafter be acquired prior to the sale herein ordered, shall be sold by or under the direction of Ed. Rand, who is hereby appointed Special Master of this Court for said purpose, as one property, and not in separate parcels and in the manner hereinafter directed, to satisfy the amounts due, and to become due as aforesaid, for principal and interest on said outstanding bonds and the several sums herein allowed and decreed to be paid, or so much thereof as such property will bring upon such sale, and that Ed. Rand, master aforesaid, make such sale in accordance with the course and practice of this Court, and that at such sale the said complainant, or any of the holders of said outstanding bonds, may become the purchaser or purchasers at such sale; and that all of the property ordered to be sold under this decree shall be sold at public sale to the highest bidder, between nine o'clock in the morning and four o'clock in the evening, at the door of the court house of said Baker County, in the City of Baker, the county seat of said County; that notice of such sale shall be given by said master by publication thereof once each week for six successive weeks preceeding the date of sale in the Pine Valley Herald, a weekly newspaper of general circulation in said Baker County, in addition said no-

tice shall also be published at least once a week for six successive weeks in at least one daily newspaper of general circulation published in the City of New York, in the State of New York, and said notice shall contain a statement of the time and place of sale, the terms and conditions thereof as herein prescribed and a brief general description of the mortgaged property to be sold; and it is further ordered, adjudged and decreed that the purchaser or purchasers of said mortgaged property at such sale shall be entitled to use and apply in making payment of the purchase price any of the outstanding bonds secured by said mortgage as therein provided, but a sufficient portion of the purchase price shall be paid in cash to provide funds for payment of all costs and expenses incurred herein, and that the master return the cash proceeds of said sale to the Clerk of this Court and that the same be paid to the Clerk of this Court and upon the completion and confirmation by this Court of the sale made under and in pursuance of this decree the said Clerk of this Court shall pay out such moneys as follows:

1. The expenses of the sale of said property.
2. The expenses of the receivership herein.
3. The costs of this suit.
4. Complainant's attorneys' fees.
5. The taxes and other expenses incurred and paid pursuant to the provisions of said mortgage.
6. All amounts due or to become due upon the bonds secured by said mortgage and in case such proceeds shall be insufficient to pay in full the whole

amount of principal and interest so due and unpaid on such bonds, then the proceeds shall be applied ratably upon the whole amount due according to the aggregate thereof without preference or priority of any part over any other part thereof.

7. The remainder, if any, to respondent, The Cornucopia Mines Company, of Oregon, its successors and assigns.

And it is further ordered, adjudged and decreed, that if the moneys arising from said sale shall be insufficient to pay the said costs, expenses, fees and all allowances made by this decree and the amounts due upon all of said bonds, then in such case said respondent, The Cornucopia Mines Company, of Oregon, shall pay to said complainant the amount of such deficiency, and said complainant may have execution therefor.

That upon the completion and confirmation of any sale made under and in pursuance of this decree, unless said property shall be redeemed as by law provided, as aforesaid, shall make, execute and deliver to the purchaser or purchasers of said property a good and sufficient deed of conveyance thereof in fee simple, which deed shall specify the property so conveyed and the sum paid therefor, and that said respondent, by its proper corporate officers join in the execution of said deed.

That the respondents, Valentine Laubenheimer, S. W. Holmes and The Cornucopia Mines Company, a corporation, and each, any, and all of them, and all persons claiming by, through or under them, or

either or any of them be, and they hereby are forever barred and foreclosed from all right or equity of redemption and all claim of, in and to the said mortgaged property, or any part thereof, unless all the amounts adjudged by this decree to be due and payable, are paid in accordance with the provisions of this decree before the time of said sale or shall be redeemed as by law provided; at the time of the execution of said deed the said Robert M. Betts, as receiver, shall also make, execute and deliver a good and sufficient deed of conveyance of any and all property of the said, The Cornucopia Mines Company, a corporation, or any interest therein, vested or standing in the name of the receiver, or to which said receiver has acquired any right, title or interest.

That upon the execution and delivery of the conveyance or conveyances aforesaid, the said purchaser or purchasers, his or their representatives or assigns, be let into the possession of all of the said mortgaged premises or property so conveyed to him or them, and that any of the parties to this cause, their agents, officers and employees, who may be in possession of the said mortgaged premises or property, or any part of the same, and any person, who has since the commencement of this suit come into the possession of the same, or any part thereof, shall forthwith surrender possession thereof, to such purchaser or purchasers, his or their representatives or assigns.

That said Ed. Rand, Master in Chancery, as aforesaid, make report of his acts and doings under

this decree, with all convenient promptness, after said sale shall have taken place.

Dated this 30th day of April, A. D. 1912.

R. S. BEAN,
Judge.

Filed April 30th, 1912.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 5th day of July, 1912, there was duly filed in said Court, and cause, the Report of Sale by the Special Master, in words and figures as follows, to-wit:

Report of Sale.

Pursuant to the order duly appointing me, the undersigned, a Special Master in Chancery, to make sale of the properties of the respondent, The Cornucopia Mines Company of Oregon, which order is filed and recorded herein and to which reference is hereby made, I, as such Special Master, hereby report as follows:

TO THE HONORABLE THE JUDGES OF THE
DISTRICT COURT OF THE UNITED
STATES, FOR THE DISTRICT OF ORE-
GON.

I, the undersigned, as Special Master, herein, by virtue of the decree of the said District Court of

the United States for the District of Oregon, made and entered in this cause on the 30th day of April, 1912, decreeing a foreclosure of the mortgage against the respondent, The Cornucopia Mines Company, to which decree special reference is hereby made for the particular terms and conditions thereof; and pursuant to the order aforesaid of this Court, duly entered in this cause, appointing me as Special Master to make such foreclosure-sale and report thereon, I caused to be published in the Pine Valley Herald, a weekly newspaper of general circulation published at Halfway, Baker County, Oregon, a notice of Master's Sale of the said properties of the said respondent Cornucopia Mines Company of Oregon, in which notice so printed and published, all of the said properties of the said respondent were fully and particularly described, which notice was published in each and every issue of said paper for the full period of six weeks successively, commencing with the issue of May 9th, 1912, and ending with the issue of June 13th, 1912, in the regular issues and not in any supplement thereof, in and by which notice it was duly advertised that I would sell all of said properties of said Cornucopia Mines Company of Oregon to the highest bidder for cash or for cash and bonds, as an entirety, at public auction, at the City of Baker, County of Baker, State of Oregon, on Saturday, June 29th, 1912, a copy of which notice so published and duly subscribed and verified is hereto attached as a part of this report. And I also caused to be published in the Morning Telegraph, a daily newspaper of general circulation pub-

lished in the City of New York, in the State of New York, a like notice, fully describing all said properties and in like manner, to-wit, for six successive weeks preceding the said date of sale, to-wit: the 29th day of June, 1912, a copy of which notice, duly subscribed and verified, is hereto attached as a part of this report.

That by each of said notices I gave notice that such sale of said properties would be at the door of the Court House in said Baker County, in the said City of Baker, in said County, between nine o'clock in the morning and four o'clock in the afternoon.

Accordingly, at nine o'clock in the morning of June 29th, 1912, at the door of the Court House of said Baker County, in said City of Baker, I publicly published and declared that the said properties would be foreclosed and sold at eleven o'clock A. M. of the same day and at the same place.

Pursuant to the said public declaration and the said published notice and decree of this Court duly made in this cause, I offered the said properties described in said notice and said decree for sale to the highest bidder, as an entirety, and for cash, or cash and bonds.

Thereupon, C. E. S. Wood, of Portland, Oregon, as trustee for the bondholders, bid the sum of Four Hundred and Thirty-two Thousand (\$432,000) Dollars. There was no other bid and after publicly crying the property and inviting bids, there being no other bids, I struck down and sold the said properties and the whole thereof to the said C. E. S. Wood, Trustee,

for the sum of Four Hundred and Thirty-two Thousand (\$432,000) Dollars.

The said C. E. S. Wood, Trustee, then and there rendered to me in payment of his said bid six hundred (60) first mortgage bonds of the respondent, The Cornucopia Mines Company of Oregon, numbered from one (1) to six hundred (600), and of the par value of five hundred (\$500) dollars each, or the total principal sum of Three Hundred Thousand (\$300,000) Dollars, each bond bearing interest at the rate of 6% per annum and carrying accrued and unpaid interest in the total sum of one hundred and thirty-six thousand (\$136,000) dollars. And I then and there accepted said bonds with the said accrued interest, in full payment and satisfaction of the bid of the said C. E. S. Wood, Trustee, and then and there declared to him that I had sold to him as trustee and would convey to him as such trustee, or to his assigns, the following described properties, together with all appurtenances thereunto belonging, and all the properties whatsoever, real or personal, of The Cornucopia Mines Company of Oregon, whether specifically described in the following schedule or not.

(Description of property sold by Master herein, see pages of Complainant's Bill, where property sold is fully described.)

I further report, that I have delivered to said C. E. S. Wood, Trustee, a copy of this report, duly signed by me, as a certificate of sale, and that I hold said bonds to be returned into the registry of this

Court, or otherwise, as the Court may direct, to be cancelled, and as so cancelled to be re-delivered to the respondent, The Cornucopia Mines Company of Oregon, as the purchase price paid by the purchaser, C. E. S. Wood, Trustee, for the said properties, and as liquidation of the indebtedness of said The Cornucopia Mines Company of Oregon.

All of which is respectfully submitted.

ED. RAND,
Special Master of Chancery.

*In the District Court of the United States for the
District of Oregon.*

(IN EQUITY.)

**Notice of Master's Sale Under Decree of Fore-
closure.**

WHEREAS at the term of the District Court of the United States for the District of Oregon held at the City of Portland, in the State of Oregon on the 30th day of April, 1912, a decree was entered in the above entitled suit foreclosing the mortgage against said respondent, The Cornucopia Mines Company, mentioned and described in said complaint from the complainant; and

WHEREAS, IT IS THEREIN ORDERED, ADJUDGED AND DECREED that all of the corporate property now owned or hereafter to be acquired by said The Cornucopia Mines Company within the State of Oregon or elsewhere; shall be

sold at public sale, that is to say, a public sale shall be made of all and singular the water rights, flumes, electric plant, mines, mining claims, equipment and all other property then held or acquired or thereafter held or acquired, and also all the easements, property, leasehold rights, and things of whatsoever name or nature then owned by The Cornucopia Mines Company, a corporation, or which might be thereafter acquired by it, the said property then in existence being specifically described in said mortgage or deed of trust as follows:

For description of the property described in this Notice, see Bill of Complaint, pages to

WHEREAS, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Special Master in Chancery appointed therefor shall sell said property for cash, or for cash and bonds, and as an entirety, at public auction to the highest bidder therefor at the City of Baker, in the County of Baker and State of Oregon; and

WHEREAS, IT IS FURTHER ORDERED, ADJUDGED AND DECREED that notice of the time and place of sale shall be given by said Special Master by advertising the same by publication thereof once each week for six successive weeks preceeding the date of sale in the Pine Valley Herald, a weekly newspaper of general circulation in said Baker County, and said notice shall also be published at least once a week for six successive weeks in at least one daily newspaper of general circulation, published in the City of New York in the State of

New York; and that such sale shall be had between 9 o'clock in the morning and 4 o'clock in the afternoon, at the door of the Court House of said Baker County, in the City of Baker in said County.

NOW, THEREFORE, public notice is hereby given that I, Ed. Rand, Special Master, in pursuance of the provisions of the said decree, will, on Saturday, the 29th day of June, A. D. 1912, at the hour and place hereinbefore stated, sell at public auction to the highest bidder in accordance with the terms and conditions of said decree, the above described property, lands and premises, and will apply the proceeds thereof as by said decree made and provided.

ED. RAND,
Special Master, District Court of United
States, District of Oregon.

Affidavit of Publication.

State of Oregon,
County of Baker.—ss.

I, Wm. L. Flower, being first duly sworn, depose and say, that I am foreman of the PINE VALLEY HERALD, a weekly newspaper of general circulation published at Halfway, Baker County, Oregon, and that the hereunto attached Notice of Master's Sale was published in each and every issue of said paper for the full period of six weeks or six successive issues thereof, commencing with the issue of

May 9th, 1912, and ending with the issue of June 13th, 1912, and not in any supplement thereof.

WM. L. FLOWER.

Subscribed and sworn to before me this 15th day of June, 1912.

(Seal) W. J. DOUGLAS,
Notary Public of Oregon.

State of New York,
City and County of New York.—ss.

E. C. Clark, being duly sworn, says that he is the principal clerk of the Publisher of The Morning Telegraph, a daily newspaper, printed and published in the City and County of New York, that the advertisement hereto annexed has been regularly published in the said The Morning Telegraph, once a week for six successive weeks, beginning on the 16th day of May, 1912, and also on the 26th day of June, 1912.

E. C. CLARK.

Sworn to before me, this 26th day of June, 1912.

(Seal) JOHN J. NELL, Jr.,
Notary Public for New York County.

Master's Report of Sale:
Filed July 5th, 1912.

A. M. CANNON.
Clerk.

And afterwards, to-wit, on the 6th day of August, 1912, there was duly filed in said Court, and cause, a Motion for Confirmation of sale, in words and figures as follows, to-wit:

Motion to Confirm Sale.

Now comes Hamilton Trust Co., the complainants herein, by C. E. S. Wood, its attorney, and shows to the Court that heretofore, June 29th, 1912, pursuant to the order of this Court, Ed. Rand, Special Master in Chancery, regularly and duly sold all of the properties of the Respondent Cornucopia Mines Company to C. E. S. Wood, Trustee, the highest bidder, for the sum of four hundred and thirty-two thousand (\$432,000) dollars, and received payment in the first mortgage bonds of the Respondent and said Special Master has made due return and report of all his doings in the premises, which report was filed herein July 5th, 1912. And no objections of any kind have been filed to said report. And the said Complainant herein Hamilton Trust Company moves the Court that the said sale to C. E. S. Wood be confirmed.

C. E. S. WOOD,
of Attorneys for Complainant,
Hamilton Trust Company.

Filed August 6th, 1912.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on Tuesday, the 6th day of August, 1912, the same being the 31st Judicial day of the regular July, 1912, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Confirming Sale.

On motion of Mr. C. E. S. Wood, attorney for the complainant, Hamilton Trust Company, that the sale of all the properties of the respondent, to C. E. S. Wood, trustee, for the sum of Four Hundred and Thirty-two Thousand Dollars, be confirmed. And it appearing that Ed. Rand, Special Master in Chancery, duly appointed to make sale of the properties designated and described in the bill of foreclosure, did on the 29th day of June, 1912, pursuant to the order of this Court, make sale of such properties specially described to C. E. S. Wood, trustee, for the sum of Four Hundred and Thirty-two Thousand dollars, and on July 5th, 1912, filed his report in the premises and that since the filing of his said report, the full time required by the rule of Court in the premises has elapsed, and no objection of any kind has been filed, and no one has appeared to object to said report or any part thereof. It is hereby ordered that the said sale of all the properties of The Cornucopia Mines Company and all of the said properties specially described in the bill of complaint and in the order of sale and in said Master's Report to C. E. S. Wood, trustee, for the sum of Four Hundred and Thirty-two Thousand (\$432,000) Dollars be and

hereby is confirmed in every respect, and the surrender of C. E. S. Wood, trustee, to said Ed. Rand, Special Master in Chancery, of six hundred of the first mortgage bonds of the said Cornucopia Mines Company, respondent, with unpaid accrued interest thereon in the sum of one hundred and thirty-six thousand (\$136,000) dollars, and the acceptance by said Rand of said bonds and interest as full payment of the said bid by C. E. S. Wood, trustee, is hereby approved and that as against the respondent Cornucopia Mines Company, the said C. E. S. Wood, trustee, ought to be and hereby is credited with any overplus between the amount of said bid and the value of the bonds and accrued interest surrendered, if upon any future showing such credit between said respective parties become material, and it is further ordered that if no redemption of said properties or any of them be had or other proceeding in the nature of a stay, the said Special Master Ed. Rand shall, on the expiration of the redemption period, to-wit, sixty days from this date, convey to said C. E. S. Wood, trustee, by the usual Master's deed in due form all of the properties of the Cornucopia Mines Company, respondent herein, especially those properties specifically described, the sale of which to C. E. S. Wood, trustee, is hereby confirmed as aforesaid, and which are hereby declared to be Mining Properties as follows, to-wit:

(Description of property sold by Master herein, see pages of Complainant's Bill, where property sold is fully described.)

R. S. BEAN,
United States District Judge.

Filed August 6th, 1912.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 30th day of August, 1912, there was duly filed in said Court, and cause, Final Report of Receiver, in words and figures as follows, to-wit:

Final Report of Receiver.

To the Honorable Judges of the District Court of the United States for the District of Oregon:

Robert M. Betts, respectfully submits his report as Lessee and Receiver herein:

1. That said Robert M. Betts was heretofore by an order of this Court duly appointed the receiver of The Cornucopia Mines Company of Oregon, a corporation, in the suit of the above named complainant in a mortgage foreclosure proceeding in this Court.

2. That thereafter he duly qualified as such receiver in the above named suit and proceeding.

3. That during the said receivership of said Cornucopia Mines Company of Oregon as aforesaid he held and operated said Mines under a written

lease with said Cornucopia Mines Company from the first day of November, 1911, until the first day of November, 1912.

That he hereby submits this his final report of the operation of said mines under said lease and receivership to this Court, said account showing that he received \$71,681.27 as receipts from ores, bullion and concentrates in the operation of said mines of said respondent; that said account shows his total expenditures in the conduct and operation of said mines, stamp mill, etc., in the sum of \$71,681.27, less a deficit of \$781.81. That he took proper signed vouchers for each and every item of account as set forth in the account attached hereto and made a part of this final report.

5. That he examined each and every voucher and account of such expenditure, as shown by the vouchers, and finds the same correct and true.

6. That all the property of every kind and character real and personal, and all assets of The Cornucopia Mines Company of Oregon, respondent, were sold under a decree and order of this Court on the 29th day of June, 1912, by Ed. Rand, the Special Master of the District Court of the United States for the District of Oregon, who was theretofore appointed by this Court as such special master, and before said sale as aforesaid he duly qualified as such special master; that at such master's sale as aforesaid, said property real and personal was sold to C. E. S. Wood, as trustee, by Ed. Rand, as Special Master

of this Court, and said sale was afterwards by this Court duly confirmed.

7. That there is no other property real or personal of said Cornucopia Mines Company of Oregon, respondent, unsold or remaining to be administered upon by said receiver.

Wherefore, said Robert M. Betts, as such receiver, prays this Court to approve said final accounting and settle same; that upon the settlement of said account that said receiver be discharged as such receiver, and his bond exonerated.

Respectfully submitted,

ROBERT M. BETTS.

The Cornucopia Mines Co. of Oregon.

Receipts and expenditures accrued prior to appointment or Receiver, January 1st, 1912:

Expenditures.		Receipts.
Voucher No.		
525.....\$	22.00	From Lessee Act.....\$ 1,224.19
526.....	687.50	Bal. Conc. Lot 103..... 2,795.59
527.....	1.57	
528.....	10.50	
529.....	14.14	
530.....	59.00	
532.....	14.04	
534.....	7.08	
535.....	9.68	
550.....	484.35	

536.....	31.20
538.....	100.00
539.....	20.00
540.....	132.47
542.....	10.80
543.....	79.25
545.....	188.60
546.....	217.19
547.....	664.70
549.....	8.48
551.....	152.01
552.....	4,065.45

\$ 6,980.01

\$ 4,019.78

Receipts and expenditures for the month of January, 1912.

Expenditures.**Receipts.**

Voucher No.

553.....\$	7.50	Bullion.....	\$ 1,561.28
554.....	1,409.75	Concentrate.....	1,500.00
555.....	62.70	Bullion.....	1,357.40
556.....	105.15	do	1,599.00
557.....	350.00	Concentrate.....	2,869.71
558.....	10.00	Bullion.....	1,371.57
559.....	250.00	Leesee Act	4.00
560.....	13.75	Voucher 571.....	1,150.00
561.....	488.37	do 559.....	250.00
562.....	100.00		
563.....	513.75		
564.....	17.30		

566.....	50.00
567.....	3.99
568.....	100.16
569.....	97.38
570.....	13.70
571.....	1,150.00
572.....	31.40
573.....	33.26
574.....	122.50
575.....	225.00
576.....	211.32
577.....	4.40
578.....	131.36
579.....	34.33
581.....	119.70
582.....	21.45
583.....	4,015.70

\$ 9,693.92

\$11,662.96

Receipts and expenditures for the month of February, 1912.

Expenditures.

Receipts.

Voucher No.

584.....\$	246.50	Bullion.....\$	1,438.61
586.....	2.55	Concentrate.....	4,519.97
587.....	87.80	C. Trad. Co.....	3.67
588.....	350.00		
589.....	78.50		
590.....	720.98		
591.....	18.55		
592.....	100.00		

593.....	1.50
594.....	48.20
595.....	5.15
596.....	30.33
597.....	2.30
598.....	77.43
599.....	14.00
600.....	25.91
601.....	641.27
602.....	123.58
603.....	685.35
604.....	284.79
605.....	250.00
607.....	200.85
608.....	3.15
609.....	140.00
610.....	150.00
611.....	153.76
612.....	27.00
613.....	416.98
614.....	343.75
617.....	73.55
618.....	250.00
619.....	21.50
620.....	3,807.35

\$ 9,382.58

\$ 5 962 25

Receipts and expenditures for the month of March, 1912.

Expenditures.		Receipts.	
Voucher No.			
621.....	\$ 76.00	Bullion.....	\$ 1,545.16
622.....	155.68	Concentrate.....	300.00
623.....	847.30	Bullion.....	1,334.51
624.....	2.80	Concentrate.....	1,000.00
625.....	116.00	do	3,882.33
626.....	350.00	do	4,000.00
628.....	100.00	Bullion.....	1,359.47
629.....	621.68		
630.....	3.00		
631.....	319.48		
632.....	32.00		
633.....	15.07		
634.....	375.61		
635.....	159.57		
636.....	1,152.93		
637.....	7.25		
638.....	107.25		
640.....	1,332.68		
641.....	46.43		
642.....	2.80		
643.....	500.00		
644.....	3,600.75		
<hr/>		<hr/>	
\$ 9,924.28		\$13,421.47	

Receipts and expenditures for the month of April,
1912.

Expenditures.**Receipts.**

Voucher No.

645.....\$	27.00	Bullion.....	\$ 1,405.82
646.....	2.45	Concentrate.....	300.00
647.....	14.00	Bullion.....	1,466.95
648.....	75.24	C. Trad. Co.....	59.80
649.....	1.65	Standard O.	2.10
650.....	62.70	Bullion.....	1,381.49
651.....	27.00	Concentrate.....	861.89
652.....	708.55		
653.....	350.00		
654.....	100.00		
655.....	843.80		
657.....	75.10		
658.....	139.50		
659.....	215.66		
660.....	7.60		
661.....	32.37		
663.....	37.52		
664.....	23.81		
665.....	35.52		
667.....	100.04		
668.....	105.04		
669.....	93.64		
670.....	4,467.70		

\$ 7,545.89

\$ 5,478.05

Receipts and expenditures for the month of May,
1912.

Expenditures.

Receipts.

Voucher No.

672.....\$	616.11	Bullion.....\$	1,199.45
673.....	34.54	do	1,091.27
674.....	89.43	Concentrate.....	300.00
675.....	60.50	Bullion.....	1,669.94
676.....	381.75	Concentrate.....	4,377.56
677.....	874.30	S. & F. Ford.....	1.15
678.....	100.00	Coffinberry	36.95
679.....	766.40	Witten	33.00
680.....	325.00		
681.....	13.00		
682.....	18.00		
683.....	50.00		
684.....	50.00		
685.....	50.00		
686.....	41.85		
687.....	74.63		
688.....	16.95		
689.....	108.35		
690.....	15.75		
691.....	246.00		
692.....	1,523.27		
693.....	113.52		
694.....	115.00		
695.....	177.00		
696.....	3.63		
697.....	350.00		
698.....	31.80		

699.....	235.00
700.....	257.16
701.....	2.90
702.....	372.23
703.....	178.87
704.....	247.64
705.....	4.48
706.....	5,043.60

\$12,588.66

\$ 8,709.32

Receipts and expenditures for the month of June,
1912.

Expenditures.**Receipts.**

Voucher No.

708.....\$	19.60	Buebendorf	\$	49.05
709.....	95.00	Bullion.....		1,363.08
710.....	11.95	do		757.44
711.....	385.00	Concentrate.....		3,970.04
712.....	38.00	do		4,366.51
713.....	684.60	do		300.00
715.....	100.00	C. Trad. Co.....		580.53
716.....	10.34			
717.....	3.35			
719.....	12.78			
720.....	250.00			
723.....	6.78			
724.....	54.75			
728.....	237.77			
731.....	276.46			
732.....	61.70			
734.....	30.13			

736.....	14.55
737.....	950.33
740.....	4,569.10

\$ 7,812.19

\$11,386.65

Receipts and expenditures for the month of July,
1912.

Expenditures.**Receipts.**

Voucher No.

743.....\$	100.00	Ross	\$	25.75
744.....	75.00	Concentrate.....		100.00
745.....	55.20	do		3,500.00
746.....	11.75	do		455.15
747.....	20.00	do		1,000.00
748.....	100.00	do		3,078.08
749.....	3.25	R. M. Betts.....		2,100.00
754.....	22.00			
755.....	83.80			
756.....	138.03			
757.....	50.53			
758.....	61.20			
759.....	3.18			
761.....	25.39			
762.....	58.00			
763.....	11.61			
764.....	644.69			
765.....	95.34			
766.....	14.40			
767.....	300.00			
769.....	2.75			
770.....	77.60			

771.....	195.18
772.....	286.16
773.....	877.01
777.....	5.00
778.....	12.00
779.....	100.00
780.....	71.06
781.....	6.31
782.....	200.00
783.....	13.20
785.....	4,033.10

\$ 7,753.74

\$10,258.98

Recapitulation.

Accrued before the appointment of the Receiver.

	Expenditures.	Receipts.
During Receivership.....	\$ 6,980.01	\$ 4,019.78
January, 1912.....	9,693.92	11,662.96
February, 1912.....	9,382.58	5,962.25
March, 1912.....	9,924.28	13,421.47
April, 1912.....	7,545.89	5,478.05
May, 1912.....	12,588.66	8,709.32
June, 1912.....	7,812.19	11,386.65
July, 1912.....	7,753.74	10,258.98
Cash deficit.....		781.81
	<hr/>	<hr/>
	\$71,681.27	\$71,681.27

Filed August 30, 1912.

A. M. CANNON,
Clerk.

And Afterwards, to-wit, on the 10th day of October, 1912, there was duly filed in said Court, and cause, an Affidavit for Appointment of Guardian ad litem, of John L. Bisher, Jr., in words and figures as follows, to-wit:

Affidavit of John L. Bisher, Jr.

State of Oregon,
County of Multnomah.—ss.

I, John L. Bisher, Jr., being first duly sworn, depose and say that I am the son of John L. Bisher, Sr., and am of the age of eighteen years.

That on or about the 28th day of July, 1912, I was working for Robert M. Betts, as receiver of the Cornucopia Mines Company of Oregon, and while so employed, I received personal injuries which I contend were caused by the negligence of said receiver, and I deem it necessary to institute legal proceedings for the recovery of damages sustained thereby.

I have no regular guardian and desire that my father, John L. Bisher, be appointed guardian ad litem to institute legal proceedings in my behalf to recover damages from Robert M. Betts, as receiver for the Cornucopia Mines Company of Oregon.

JOHN L. BISHER, JR.

Subscribed and sworn to before me this 10th day of October, 1912.

(Seal)

J. F. BOOTHE,

Notary Public for Oregon.

Filed October 10th, 1912.

A. M. CANNON,

Clerk.

And afterwards, to-wit, on Thursday, the 10th day of October, 1912, the same being the 87th Judicial day of the regular July, 1912, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Appointing Guardian Ad Litem.

Now, at this time, upon the application of John L. Bisher for an order appointing a guardian ad litem for the purpose of instituting legal proceedings against the above named Robert M. Betts, as receiver of the Cornucopia Mines Company of Oregon.

It appearing to the Court from the affidavit of John L. Bisher, Jr., that he was in the employ of said receiver, Robert M. Betts, during the month of July, 1912, and that on or about the 28th day of July, 1912, he sustained personal injuries wherein he claims that said injuries were caused by the negligence of said Robert M. Betts as receiver of The Cornucopia Mines Company of Oregon.

And it further appearing to the Court that said John L. Bisher, Jr., has not heretofore had a legal guardian appointed for him.

And it further appearing to the Court that John L. Bisher, Sr., is the father of said John L. Bisher, Jr., having his legal custody.

IT IS HEREBY ORDERED that said John L. Bisher, Sr., be and he is hereby appointed guardian

of said John L. Bisher, Jr., for the purpose of instituting and carrying on legal proceedings against Robert M. Betts as receiver of The Cornucopia Mines Company of Oregon, and said corporation, for the recovery of damages alleged to have been sustained by said John L. Bisher, Jr., while in the employ of said Robert M. Betts, as receiver of said corporation.

R. S. BEAN,
Judge.

Filed October 10th, 1912.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 13th day of May, 1913, there was duly filed in said Court, and cause, a Motion for Leave to Intervene, in words and figures as follows, to-wit:

Motion for Leave to Intervene.

Now, at this time comes John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, and moves the Court for an order permitting him to file his petition of intervention in the above entitled cause as a lien creditor, and herewith presents his petition, duly verified, setting forth his reasons for intervention, and asks the Court to be permitted to file said petition and that the Court fix a time for a hearing by the complainant and respondents to

show cause, if any, why the prayer of said intervenor should not be granted.

BOOTHE & RICHARDSON,
Attorneys for Intervener.

Filed May 13th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on Tuesday, the 13th day of May, 1913, the same being the 62nd Judicial day of the regular March, 1913, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order to Show Cause on Petition for Leave to Intervene.

Upon reading and filing the petition of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, praying to be let in as a party in this suit, as a lien creditor.

IT IS ORDERED that the complainant and respondents herein show cause on the 28th day of May, 1913, at the opening of Court, or as soon thereafter as counsel can be heard, why the prayer of said intervenor should not be granted.

IT IS FURTHER ORDERED that copies of this order and said petition be forthwith served

upon the attorneys for the complainant and respondents respectively.

(S) CHAS. E. WOLVERTON,
Judge.

Filed May 13th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 14th day of May, 1913, there was duly filed in said Court, and cause, a Petition of John L. Bisher, Jr., in Intervention, in words and figures as follows, to-wit:

Petition of John L. Bisher, Jr.

To the Honorable Judge of the District Court of the United States, for the District of Oregon:

Now comes John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, hereinafter styled the intervener, and with leave of the Court first had and obtained, files this, his petition in intervention, in the above entitled cause, and respectfully represents and shows to the Court as follows:

I.

That the intervener is a citizen of Baker County, State of Oregon.

II.

That on or about the 12th day of October, 1912, the intervener, upon leave of the Court, duly instituted his certain action against Robert M. Betts,

but a sufficient portion of the the purchase price should be paid in cash to provide funds for payment of all costs and expenses incurred therein, and that the Master return the cash proceeds of said sale to the Clerk of this Court, and that the same be paid to the Clerk of this Court, and upon the completion and confirmation by this Court of the sale made under and in pursuance of said decree, the said Clerk of this Court should pay out such moneys as follows:

- (1) The expenses of the sale of said property.
- (2) The expenses of the receivership herein.
- (3) The costs of said suit.
- (4) The complainant's attorneys' fees.
- (5) The taxes and other expenses incurred and paid pursuant to the provisions of said mortgage.
- (6) All amounts due or to become due upon the bonds secured by said mortgage, and in case such proceeds shall be insufficient to pay in full the amount of principal and interest so due and unpaid on such bonds, then the proceeds should be applied ratably upon the whole amount due according to the aggregate thereof, without preferance or priority of any part over any other part thereof.
- (7) The remainder, if any, to The Cornucopia Mines Company of Oregon.

VI.

Thereafter and on the 5th day of July, 1912, said Special Master filed herein his report of said sale, showing that in accordance with the order of this

Court, and in accordance with the decree and order of sale, he sold to C. E. S. Wood, as trustee for the bondholders, the complainant herein, the entire property mentioned and described in said decree for the sum of Four Hundred and Thirty-two Thousand (\$432,000.00) Dollars, and that he accepted said bonds with accrued interest thereon in full payment and satisfaction of the bid of said C. E. S. Wood, trustee, as aforesaid, and then and there declared that he had sold to him as trustee, and would convey to him as such trustee, or to his assigns, the properties so sold by him, a particular description of which properties it is unnecessary to mention in this petition, but the intervener refers to the said Master's report in this proceeding for a description of the properties so sold and to be conveyed.

VII.

That on the 6th day of August, 1912, on the application of the complainant herein, said sale was confirmed by this Court.

VIII.

That thereafter and on the 30th day of August, 1912, the said Robert M. Betts, as receiver, filed herein his final report and account as such receiver, and asked that the same be approved.

IX.

That thereafter and on the 20th day of November, 1912, after said sale had been confirmed, the

said Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon, executed a deed of conveyance in favor of The Cornucopia Mines Company of New York, a corporation of New York, of all the properties described in the complaint, together with certain other properties belonging to the said Cornucopia Mines Company of Oregon and in the hands of said Robert M. Betts as receiver of said corporation, as follows:

Water right and appropriation numbered application No. 2056, to the State of Oregon, through its State Engineer John H. Lewis, and permit No. 1060 to appropriate the public waters of the State of Oregon;

Said water appropriation is taken out of Pine Creek, near the town of Cornucopia, Baker County, Oregon, for the purpose of generating electric power for operating the stamp mills, machinery and other works and lighting the Cornucopia mines at or near the town of Cornucopia, Baker County, Oregon. That the point of diversion of said water appropriation is located 38 chains S., 66 degrees 30' west of N. E. corner of Section 3, Tp. 7, S. R. 45 E., Willamette Meridian, being within the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., R. 45 E., W. M., in Baker County, Oregon. Said water appropriation is to be taken from said Pine Creek at foregoing described point of appropriation, by an intake into a flume terminating in the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., R. 45 E., W. M., in Baker County, Oregon; the name of the ditch or flume is

named Cornucopia Mines Company Flume.

Electric power is to be generated by an electric power plant with pelton wheels, located upon the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., R. 45 E., W. M.

Said water appropriation and water right, after being used for said power purposes, is returned to said described Pine Creek at a point S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Tp. 7 S., R. 45 E., W. M., in Baker County, Oregon.

For a fuller and accurate description of the said water right and appropriation hereby granted and conveyed by this deed, reference is hereby made to Application No. 2056, and Permit No. 1060, in the office of the State Engineer of Oregon, at Salem, Oregon, received by said Engineer for the State of Oregon at his said office on the 3rd day of February, 1912, at 8 A. M., and approved by said John H. Lewis, State Engineer of Oregon, on February 28th, 1912.

X.

The intervener objects to the Master's report of the sale of said property filed herein for the reason that said Master failed to require a sufficient portion of the purchase price to be paid in cash to provide funds for payment of all costs and expenses incurred therein, and the expenses of said receivership, and said sale was not made in compliance with the order of this Court.

XI.

That said receiver did not at any time report to

this Court the fact that the intervener had been injured while in the employ of said receiver, and no provision was made before the confirmation of said sale for the payment of the amount that might be found to be due to the intervener on account of his said injuries, which the said receiver at all times knew.

XII.

That said receiver is now attempting to be discharged by an order of this Court without making provision for the payment of the judgment obtained by the intervener against said Robert M. Betts as such receiver, and it would be inequitable to discharge said receiver and thereby destroy the intervener's rights by the discharge of said receiver.

XIII.

The intervener further objects to the final account of said receiver for the following reasons:

He objects to the following disbursements by the receiver for the reason that said receiver never obtained an order of the Court for such disbursements, and that they were unnecessary expenses incurred for the purpose of preserving and operating said property:

Voucher No. 538—Emmett Callahan, legal	
services for December,	
1911	100.00
” No. 581—H. B. Thomas, for	
transformers	119.70

Voucher No. 575—McKim & Co., 1 hoist.....\$	225.00
” No. 571—Hawkins & Smith, for sawing timber	1,575.00
” No. 569—General Electric Co., for electric supplies.....	97.38
” No. 568—General Electric Co., fuses and wire.....	100.16
” No. 562—Emmett Callahan, legal expense for Jan., 1912...	100.00
” No. 561—Carlson Lusk Hdw. Co., rails, plates and bolts.....	488.37
” No. 559—N. B. Booley, hauling lumber	250.00
” No. 557—Robert M. Betts, salary for January, 1912.....	350.00
” No. 555—Basche Sage Hdw. Co., freight	62.70
” No. 554—Basche Sage Hdw. Co., 150 bbls. cement.....	472.50
” No. 617—Union Iron Works, plates, brushes, etc.....	73.55
” No. 614—S. & F. Ford Co., for warding	343.75
” No. 613—S. & F. Ford Co., cya- nide plant and machin- ery supplies.....	416.98
” No. 609—Walter L. Reid, cyanide plant and other expenses	140.00
” No. 605—Alex. McDonald, pur- chase 5 acres for power site	250.00

Voucher No. 598—Galigher Machinery Co., machine parts.....	\$ 77.43
” No. 597—John W. Graham & Co., 2 rolls blue print paper..	2.30
” No. 595—W. & L. E. Curley, tan- gent screw.....	5.15
” No. 592—Emmett Callahan, legal services for February, 1912	100.00
” No. 588—Robert M. Betts, salary for February, 1912.....	350.00
” No. 584—Basche Sage Hdw. Co., 150 bbls, cement, steel plates	246.50
” No. 589—Crown Steel Works.....	78.50
” No. 640—S. & F. Ford Co., better- ment of machinery, cya- nide plant, power re- pairs, etc.....	1,332.68
” No. 631—General Electric Co., for machinery, etc.....	319.48
” No. 628—Emmett Callahan, legal expense for March, 1912	100.00
” No. 626—Robert M. Betts, salary for March, 1912.....	350.00
” No. 622—Blue Mountain Iron Works, dies and bucket..	155.68
” No. 650—Basche Sage Hdw. Co., cyanide plant.....	62.70
” No. 653—Robert M. Betts, salary for April, 1912.....	350.00

Voucher No. 651—Emmett Callahan, legal services for April, 1912...	\$ 100.00
" No. 657—Crane & Co.....	75.10
" No. 658—Denver Rock Drill & Mach. Co., mine repairs	139.50
" No. 659—Galigher Machinery Co., mining supplies.....	215.66
" No. 672—Tuffili Bros., pig iron and coke, carload of coal	616.11
" No. 676—Robert M. Betts, salary and other expenses.....	381.75
" No. 678—Emmett Callahan, legal services for May, 1912...	100.00
" No. 680—John Curry, horses.....	325.00
" No. 685—First National Bank, 20,000 saw timber.....	50.00
" No. 684—First National Bank, 20,000 saw timber.....	50.00
" No. 683—First National Bank, advertising timber sale.....	50.00
" No. 687—General Electric Co., pulley, brushes and fuse	74.63
" No. 691—E. P. Jamison & Co., drills, etc.....	246.00
" No. 692—Luce & Roseborough, betterments to machinery and cyanide plant.....	1,523.27
" No. 694—McKim & Co., ore bucket and cars.....	115.00
" No. 695—Mine & Smelter Supply Co., 6 car trucks.....	177.00

Voucher No. 709—American State Bank, timber	\$ 95.00
” No. 711—Robert M. Betts, salary and traveling expenses.....	455.00
” No. 713—Basche Sage Hdw. Co., powder	684.60
” No. 715—Emmett Callahan, legal expense	100.00
” No. 720—Hawkins & Smith, lum- ber	250.00
” No. 740—Pay roll— Cyanide plant.....	750.00
Repairs	407.80
Power labor	305.75
New power plant.....	82.50
” No. 748—Emmett Callahan, legal expense	100.00
” No. 747—C. C. Betts Co., better- ments to buildings.....	20.00
” No. 745—Robert M. Betts, salary and legal expense.....	384.00
” No. 744—American State Bank, timber	75.00
” No. 743—American State Bank, timber	100.00
” No. 754—Denver Rock Drill & Machinery Co., cylinder nuts and valves.....	22.00
” No. 757—General Electric Co., betterments to cyanide plant, etc.....	66.13

Voucher No. 756—General Electric Co., tubes, sockets and lamps.\$	138.03
” No. 758—Caligher Machinery Co., screen rods, dies, etc.....	83.35
” No. 763—Hughes & Co., boiler and stand	11.61
” No. 765—International High Speed Steel Co., betterments.....	95.34
” No. 767—Alex. McDonald, 5 acres of ground and right of way	300.00
” No. 779—Cloma Sanders, mine timbers	100.00

The intervener excepts to the report and account of said receiver for the further reasons: That it appears therefrom that the receiver disbursed, as shown by vouchers Nos. 525 to 552 inclusive, various sums of money, aggregating \$6,980.01, in payment of claims against said Mining Company prior to the appointment of said receiver, as against which disbursements said receiver accounts for moneys received from lessee and otherwise aggregating only \$4,019.78, showing a disbursement of \$2,160.23, without and authority from the Court and without authority as receiver. The said Robert M. Betts, when appointed as receiver by this Court, was authorized and directed to take immediate possession of all and singular the real and personal property covered by the mortgage sought to be foreclosed by the complainant herein, and to continue the operation of said mining and other property,

and every part thereof, as heretofore operated, and to preserve the said property in proper condition and keep the same in repair, and to employ such persons and make such payments and disbursements as may be needful and proper in doing so; that out of the moneys that should come into the hands of said receiver from the operation of said property or otherwise, he should pay the necessary expenses incident to the operation of said property and hold the remainder, if any, subject to the order of this Court, and said appointment was made on condition that said Robert M. Betts should not receive any compensation for his services as such receiver from any of the parties herein, and that he obey the orders of the Court as made from time to time.

The intervener states that said receiver has not complied with the order of the Court in his appointment in many respects: He has disbursed and paid to himself, without authority of the Court, \$350.00 a month as salary during the most of the time he has been acting as receiver, as will appear by his vouchers filed herein, besides disbursing a large amount of money for attorney's fees and has expended large sums of money in constructing a new cyanide plant and in making other improvements and betterments to said property, all of which disbursements were unnecessary to preserve the property in condition and keep the same in repair, and were unnecessarily expended for betterments of said property in disregard of the rights of this intervener.

XIV.

That the accounts of said receiver should be opened up and examined, and if the same were opened up and examined, it would be apparent to the Court that the receiver should have on hand a large amount of money that should be applied to the payment of the intervener's claim on account of his said judgment against the receiver; and it will further appear to the Court that the said receiver has, since the foreclosure of the mortgage herein and since the intervener commenced his action to recover damages, sold and transferred unto The Cornucopia Mines Company, a corporation of New York, the water rights and properties hereinbefore set forth, which properties were not included in the complainant's mortgage, but were acquired during the time the said Robert M. Betts was acting as receiver of said corporation, and at a time while this intervener was entitled to have the same held liable for the payment of the necessary expenses of the receivership, including the intervener's claim. The intervener is informed and believes that The Cornucopia Mines Company, a corporation, of New York, is merely a reorganization of a corporation taking over the properties sold by virtue of the foreclosure proceedings herein, and that the complainant, being the mortgagee and holder of the bonds, is the owner of all the property so acquired under foreclosure, but carried only in another name, to-wit: The Cornucopia Mines Company, a corporation, of New York.

XV.

The intervener further states that in the sale of the property described in the mortgage herein, the Master in Chancery did not follow the decree of the Court by requiring that in making payment of the purchase price, a sufficient portion of the purchase price should be paid in cash to provide funds for the payment of the expenses of the receivership herein, the claim of the intervener being a part of the expenses of said receivership, and that the Master's return did not contain any such cash proceeds as provided by said decree, and no money was paid by him to the Clerk of this Court upon the completion or confirmation of said sale, and said sale should not have been confirmed until such cash payment should have been made to the Clerk of this Court for payment of the receiver's expenses, including the intervener's claim.

XVI.

The intervener objects to the order, confirming the sale made by the Master hereinbefore mentioned, and to the approval of the receiver's final account and to his discharge as receiver for the reasons: That said receiver has never filed with the Clerk of this Court an inventory of the property of the Cornucopia Mines Company of Oregon, or of the property coming into his possession as such receiver. That the intervener never had any notice of the sale by the Master in Chancery of said property or of the confirmation thereof, or of the filing of the final account of said receiver, and has never had an

opportunity of objecting to said confirmation of sale or to said final account; and furthermore, that there has never been a reference to a Commissioner or other person to inquire into and take evidence touching the debt, for the payment of which said property was sold, or the indebtedness incurred by said receiver, or of the receipts and disbursements made by him. And as a further reason for vacating the order of the confirmation of said sale and for a resale of said property, the intervener avers that the said receiver was appointed at the instance and for the benefit of the complainant herein, and said receiver was charged with the duty of operating the property for the advantage of the complainant and, therefore, all charges, expenses and liabilities incurred incident to the receivership, including the intervener's claim, are a first charge, not only upon the current earnings but also upon the corpus of the estate.

WHEREFORE, the intervener prays that said Robert M. Betts be not discharged as receiver in this cause, and that he appear before the Court and show cause, if any, why his said final account should not be disallowed and set aside; and further, that the order confirming the sale made by the Master of Chancery of all the properties described in complainant's complaint herein, be also vacated and set aside. That the Court inquire into all the acts and things done by said receiver, and ascertain the amount of money and property in the hands of said receiver, or that should be in his hands, to the end that the same may be applied to the payment of the

intervener's claim, as represented by his judgment, and costs against said receiver, and that all moneys invested by said receiver in said corporation's property as betterments, and invested without orders of the Court, and the entire property belonging to said corporation and in the hands of said receiver, as well as that included in the mortgage of the complainant herein, be subjected to the payment of the intervener's claim, as represented by his said judgment. That if, upon such inquiry, it appears to the Court that there is not sufficient money in the hands of the receiver to pay the intervener's said claim that the Court make an order requiring a re-sale of said property under its said decree for the satisfaction of the same, or a sufficient amount of cash to satisfy all of the receiver's expenses, including intervener's claim of Twelve Thousand, Five Hundred (\$12,500.00) Dollars, and costs.

BOOTHE & RICHARDSON,

Attorneys for Intervener.

State of Oregon,

County of Multnomah.—ss.

I, Wm. P. Richardson, being first duly sworn, depose and say that I am one of the intervener's attorneys, and the foregoing petition is true, as I verily believe. The reason why I verify this petition is because the intervener is not within this County.

WM. P. RICHARDSON.

Subscribed and sworn to before me this 9th day of May, 1913.

J. F. BOOTHE,
(Seal) Notary Public for Oregon.

State of Oregon,
County of Multnomah.—ss.

Due and legal service of the within petition is hereby accepted in Multnomah County, Oregon, this 13th day of May, 1913, by receiving a copy thereof, duly certified to as such by J. F. Boothe, of Attorneys for Intervener.

EMMETT CALLAHAN,
Attorney for Respondent,
WOOD, MONTAGUE & HUNT,
Attorney for Complainant.

Filed May 13th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 29th day of May, 1913, there was duly filed in said Court, and cause, a Motion to Dismiss Petition in Intervention, in words and figures as follows, to-wit:

Motion to Dismiss Petition in Intervention.

Now comes the respondent (The Cornucopia Mines Company of Oregon), and appearing herein specially for the purpose of this motion, and not otherwise, hereby moves the Court to dismiss the

petition in intervention asked and prayed for by John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, in the prayer of his said alleged petition in intervention filed in the above entitled cause, and to enter judgment of such dismissal with costs on the following grounds:

First. That no summons has been issued or served upon the respondent above named, or return made thereon, that no summons has been served upon respondent as required by the laws of the United States of America, and the State of Oregon, in such cases made and provided. That on the 5th day of December, 1911, a suit in equity was filed to foreclose a mortgage in the sum of Three Hundred and Ninety-nine odd Thousand Dollars, wherein The Hamilton Trust Company was complainant and the Cornucopia Mines Company of Oregon, Valentine Laubenheimer and S. W. Holmes were respondents, that upon said bill in equity as aforesaid and on proper motion and application therefore, a receiver was appointed on the 21st day of December, 1911. That thereafter, on January 21st, 1912, Robert M. Betts, was appointed receiver of said corporation, respondent, in said mortgage foreclosure suit. That thereafter, on the 30th day of April, 1912, a decree order pro confesso was entered in said foreclosure suit as aforesaid; that upon the 30th day of April, 1912, this Court decreed a foreclosure of said mortgage for the sum including costs of over Four Hundred Thousand (\$400,000) Dollars; that thereafter, Ed. Rand was duly appointed

under a regular and valid order of this Court as a master to sell said property according to law, the rules and procedure of this Court. That said master duly advertised by publication in a newspaper designated by this Court, giving notice of sale of said property of respondent under the decree of foreclosure made and entered by this Court. That said master also, under the order of this Court, advertised said property for sale by due and legal notice in a newspaper in the State and City of New York, the first publication of said notice being May 9th, 1912, and the last publication of said notice being June 13th, 1912. That after said publications having been duly made as aforesaid, said Ed. Rand, special master of the District Court of the United States for the District of Oregon, sold all of said property on the 29th day of June, 1912, in front of the court house in Baker City, Baker County, Oregon, wherein the property of said respondent, Cornucopia Mines Company of Oregon was situate, to C. E. S. Wood, as trustee, for the mortgage bond holders, for the sum of Four Hundred and Thirty-Two Thousand (\$432,000) Dollars. That said master, thereafter, so reported said sale and his doings thereunder his appointment as special master of this Court. That thereafter, on the 6th day of August, 1912, said sale, as aforesaid, as made by said master, to C. E. S. Wood, as trustee, for the mortgage bond holders, was duly confirmed by this Court.

Second. That after the period of redemption from execution and mortgage sale of the property

of said respondent, Cornucopia Mines Company, had expired, C. E. S. Wood, as trustee, upon order, designation and request of said mortgage bond holders, complainants, in the suit of The Hamilton Trust Company, a corporation, against The Cornucopia Mines Company of Oregon, et al., conveyed all of said property of The Cornucopia Mines Company of Oregon, purchased by him as trustee, on the 29th day of June, 1912, to a corporation organized under the laws of the State of New York, said corporation now being the owners, the holders and in possession and operating said mining properties and mines.

Third. That upon the 12th day of October, 1912, John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, commenced an action in this Court against Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, for damages in the sum of Fifty Thousand (\$50,000) Dollars for injuries to the plaintiff, John L. Bisher, Jr., alleged to have been received by said Bisher on the 28th day of July, 1912. That said mines and property so sold as aforesaid to C. E. S. Wood, as trustee for the bond holders on the 29th day of June, 1912, was so taken out of the hands and receivership of said Robert M. Betts, as receiver on the 29th day of June, 1912, and said mines were not in the possession of said Robert M. Betts, as receiver, at any time or date after the 28th day of June, 1912, or conducted or operated by him at any time or date subsequent to said 29th day of June, 1912, as receiver. That in the case of John L. Bisher, Jr., by

his guardian ad litem, John L. Bisher v. Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, a judgment was rendered by a jury in this Court in favor of said plaintiff and against said defendant on the 11th day of April, 1913. That a bill of exceptions in said case was duly deposited with the clerk of this Court on the 24th day of May, 1913, in said action. That said Cornucopia Mines Company of Oregon, respondent, and said Hamilton Trust Company, complainant, were not made parties defendant or otherwise, to the said action of John L. Bisher, Jr., by John L. Bisher, his guardian, ad litem, v. Robert M. Betts, receiver. That no summons, process or writ was ever served upon said Cornucopia Mines Company of Oregon, respondent, or Hamilton Trust Company, complainant in said suit of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem.

This motion is made and based and will be heard upon the affidavits on file and upon the files, papers and proceedings, the minutes of this Court and records in the suits and actions in the following causes in action, Hamilton Trust Company v. The Cornucopia Mines Company, et al., and John L. Bisher, Jr., by John L. Bisher, his guardian, ad litem, v. Robert M. Betts, receiver.

EMMETT CALLAHAN,
Attorney for Respondent for this Motion
and not otherwise.

Filed May 29th, 1913.

A. M. CANNON,
Clerk.

District of Oregon,
County of Multnomah.—ss.

Due service of the within motion is hereby accepted in Portland, Multnomah County, Oregon, this 28th day of May, 1913, by receiving a copy thereof, duly certified to as such by Emmett Callahan, attorney for respondent.

BOOTHE & RICHARDSON,
Attorneys for

Filed May 29th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on Thursday, the 29th day of May, 1913, the same being the 76th Judicial day of the regular March, 1913, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Making John L. Bisher, Jr., Defendant.

On reading and filing the petition of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, duly verified, and proof of due service of the notice of this motion, and the complainant, The Hamilton Trust Company, and the respondent, The Cornucopia Mines Company of Oregon, having heretofore filed their motion to dismiss the said petition of intervention, and said motion having been heretofore argued and submitted to the Court, and the Court having fully considered the same, does

HEREBY ORDER that the motion of the complainant, Hamilton Trust Company, and respondent, said The Cornucopia Mines Company of Oregon, to dismiss said petition of intervention be and the same hereby is denied.

IT IS FURTHER ORDERED that said John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, be and he hereby is made a party defendant herein as a judgment lien creditor of Robert M. Betts, receiver of the respondent, The Cornucopia Mines Company of Oregon.

IT IS FURTHER ORDERED that Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, appear and show cause, if any, why said judgment heretofore obtained by John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, should not be paid, and that the said Robert M. Betts show cause herein within 20 days from this date why said judgment should not be paid, if any reason exists; and that he also within said time show cause, if any, why the final account of said receiver, as objected to by the intervener, should not be disallowed and set aside, and why the order confirming the sale made by the Master in Chancery of the properties described in the plaintiff's complaint herein should not also be vacated and set aside, and that the complainant herein, The Hamilton Trust Company, and said Robert M. Betts as receiver of The Cornucopia Mines Company of Oregon, show cause, if any, why the judgment obtained by said John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, for the

sum of Twelve Thousand Five Hundred (\$12,500) Dollars and costs, should not be made a first lien upon the properties of the said Cornucopia Mines Company of Oregon in the hands of the receiver on the 28th day of July 1912, or upon any other property belonging to said corporation and within the hands of said receiver at said time.

CHARLES E. WOLVERTON,
Judge.

Filed May 29th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 20th day of June, 1913, there was duly filed in said Court, and cause, an Answer to Order to Show Cause, in words and figures as follows, to-wit:

Answer to Order to Show Cause.

Now comes Emmett Callahan as attorney for The Cornucopia Mines Company of Oregon, and appearing herein specially for the purpose of responding to the order of this Court requiring it to show cause herein why John L. Bisher, Jr., by John L. Bisher, his guardian, plaintiff, in an action in this Court for damages against Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, a corporation, wherein, by said order of this Court, as aforesaid, said Hamilton Trust Company, Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, and Cornucopia Mines Company of

Oregon, are required to show cause why said John L. Bisher Jr., by his guardian, as aforesaid, should not be permitted to intervene as a judgment debtor in the case of The Hamilton Trust Company, complainant, v. The Cornucopia Mines Company of Oregon, Valentine Laubenheimer and S. W. Holmes, respondents, and to show cause why the sale and confirmation of sale of the property of The Cornucopia Mines Company of Oregon, which was sold under a regular judgment and decree of this Court in the case of The Hamilton Trust Company v. The Cornucopia Mines Company et al, respondents, and why that certain judgment recovered by John L. Bisher, Jr., by his guardian, against Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, which said action is filed and pending in this Court, and not otherwise, and shall not be vacated and set aside, and said Hamilton Trust Company, complainant, Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, and Cornucopia Mines Company of Oregon, respectfully advises and presents to this Court the following statement of facts:

First. That said Hamilton Trust Company, complainant, and Cornucopia Mines Company, respondent, in the foregoing action was not made a party defendant or otherwise by any process of this Court in the action of John L. Bisher, Jr., by his said guardian, in his said action pending in this Court against Robert M. Betts, receiver of Cornucopia Mines Company of Oregon.

Second. That on the 5th day of December, 1911, The Hamilton Trust Company, complainant, vs. Cornucopia Mines Company et al, respondents, filed it's bill of complaint in this Court, praying for judgment and decree in foreclosure against the property of the Cornucopia Mines Company of Oregon, that subpoena and process of this Court was duly issued on the 7th day of December, 1911, according to law and the procedure of this Court; that thereupon said 7th day of December, 1911, a motion and application for a receiver was filed in this Court in said action of foreclosure, that said bill of complaint, subpoenas, motion and application for receiver as aforesaid, is hereby made a part hereof and marked Exhibit "A."

Third. That thereafter, Robert M. Betts was appointed receiver of the property of The Cornucopia Mines Company of Oregon by this Court in said foregoing named action and said order as aforesaid, appointing said receiver, is made a part hereof and marked Exhibit "B."

Fourth. That on the 23rd day of December, 1913, all of the respondents in the aforementioned cause were duly served with subpoena and process of this Court as required by law and the procedure of this Court; which said process and subpoenas are hereby referred to and made a part hereof and marked Exhibit "C."

Fifth. That on the 2nd day of January, 1912, Robert M. Betts filed a good and sufficient bond

as required by the order of this Court in said foregoing action and thereby qualified and accepted his trust as receiver therein.

Sixth. That upon the 30th day of April, 1912, The Cornucopia Mines Company of Oregon, respondent in said action and foreclosure proceeding, aforesaid, duly appeared by demurrer and upon said demurrer being overruled, a decree order pro confesso was made in said action, that said demurrer and order pro confesso as aforesaid are hereby made a part hereof and marked Exhibits "D" and "E"; that thereafter on the 30th day of April, 1912, a judgment and decree of foreclosure in favor of The Hamilton Trust Company, complainant, and against The Cornucopia Mines Company of Oregon, and Valentine Laubenheimer and S. W. Holmes, respondents, was duly made, filed and entered in said action, decree and foreclosing the mortgage bonds set forth in complainant's bill of complaint which said judgment and decree of foreclosure is hereby made a part hereof and marked Exhibit "F."

Seventh. That under said judgment and decree of foreclosure, as aforesaid, duly made by this Court, a sale was had of said property of respondent, Cornucopia Mines Company of Oregon, on the 29th day of June, 1912, by Ed. Rand, a special master duly appointed to make such sale under said judgment and decree of foreclosure, that said master, who duly qualified under the appointment of

this Court as such master to make said sale, duly made said sale under the judgment and decree of this Court in front of the courthouse in Baker City, Baker County, Oregon, in which said county and state said property described in complainant's bill of complaint was situate; that said property was duly advertised for sale by publication thereof in two newspapers as shown by the master's return of said sale and his doings under his appointment and sale of said property aforesaid; that thereafter on the 5th day of July, 1912, said Ed. Rand, as such Master of this Court made the report of the sale of said property and his doings thereunder, to this Court, a copy of which said Master's Report aforesaid is hereby made a part hereof and marked Exhibit "G."

That on the 6th day of August, 1912, this Court, after the proper period of time had elapsed under the law in such cases made and provided and under the rules of this Court, duly confirmed said Master's Sale of said property as aforesaid; a copy of which order of confirmation of said sale as aforesaid, is hereby made a part hereof and marked Exhibit "H."

That on the 30th day of August, 1912, Robert M. Betts, as receiver in said foregoing named cause, prepared his report as such receiver as aforesaid, and duly filed the same in this Court with his motion thereon that said account be examined and allowed and the receiver discharged; that after the proper period of time elapsing after the filing of

said receiver's report, counsel for receiver was about to present said motion on said final account and discharge of the receiver, but deferred the same solely at the request of Boothe & Richardson, who appear in the action of John L. Bisher, Jr., by his guardian ad litem, against Robert M. Betts, receiver of Cornucopia Mines Company, and said suit is now pending in this Court.

That at the sale of said property under the decree and foreclosure of this Court in said action of the Hamilton Trust Company v. Cornucopia Mines Company of Oregon, et al, which said sale took place as aforesaid on the 29th day of June, 1912, in front of the courthouse in Baker City, Oregon, said property was offered for sale to the highest and best bidder, that at said sale C. E. S. Wood was the highest and best bidder, and said property was bid in and purchased by him at said Master's Sale as aforesaid as trustee.

That at said sale of the properties of The Cornucopia Mines Company of Oregon, described in their bill of complaint filed in this Court on the 5th day of December, 1911, said C. E. S. Wood, as trustee, at said Master's sale, which was held under the order of this Court and the judgment and decree thereof, bid the sum of Four Hundred and Thirty-two Thousand (\$432,000) Dollars as the purchase price, which included the total judgment in the foreclosure and the costs thereof; that after the confirmation of said sale of said property as aforesaid, said C. E. S. Wood, as trustee, received a deed of all

of the mines, stamp mill, electric power plant and other property sold under said sale under said decree and judgment of this Court on the 28th day of June, 1912, from said Special Master, who made said sale under the order of this Court dated the 7th day of October, 1912, which said deed was duly recorded in the Records of Deeds of Baker County, Oregon, on the 10th day of October, 1912, at 2:40 o'clock P. M., of said day; that thereafter, on the 7th day of October, 1912, C. E. S. Wood, as trustee, as aforesaid, did make and execute and acknowledge a deed conveying all of said mines, stamp mill, electric power plant and other property of The Cornucopia Mines Company of Oregon, purchased by him at the aforesaid sale on the 28th day of June, 1912, by which deed he hath granted, bargained, sold and conveyed as said trustee, for full value received, all of said property of Cornucopia Mines Company to the Cornucopia Mines Company of New York, a corporation duly organized under the laws of the State of New York and doing business within the State of Oregon, in full compliance with the laws of the State of Oregon, and conducting business in said state as such corporation; that said Cornucopia Mines Company of New York, as aforesaid, is in no wise connected with the Cornucopia Mines Company of Oregon, respondent in this action, but is composed in large part of the general purchasers and owners of the mortgage bonds of Cornucopia Mines Company of Oregon, which were foreclosed in this action in this Court;

That said Cornucopia Mines, formerly owned by The Cornucopia Mines Company of Oregon, previous to the 28th day of July, 1912, were being operated and conducted under and by virtue of a duly executed lease by The Cornucopia Mines Company of Oregon to Robert M. Betts, which said lease was in full force and effect from the first day of November, 1911, to the first day of November, 1912;

That the alleged injury to John L. Bisher, Jr., as alleged in his complaint against Robert M. Betts as receiver, in his said action in this Court, took place on a date and day, to-wit, the 28th day of July, 1912, when the said mines were being operated and conducted by the said Robert M. Betts as lessee;

That the foreclosure proceeding in the cause of the Hamilton Trust Company v. Cornucopia Mines Company of Oregon, et al, in this Court, was fully determined and concluded under the laws of the United States and of the State of Oregon and the rules of this Court and the procedure thereof, prior to the commencement of the action of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, v. Robert M. Betts, Receiver of Cornucopia Mines Company, in this Court; that said suit was not filed and instituted in this Court until after the full and final determination of the foreclosure proceeding in the case of Hamilton Trust Company v. Cornucopia Mines Company, et al, in this Court, and after the confirmation of the sale of the property sold under the foreclosure in said cause by this Court was made and determined; that summons in

said action of said John L. Bisher, Jr., for damages as aforesaid, was not served upon the defendant in said action, Robert M. Betts, receiver of Cornucopia Mines Company of Oregon, until the day of November, 1912; that on the 28th day of July, 1912, said Cornucopia Mines Company of Oregon and said Robert M. Betts, receiver thereof, were not in the possession of, the owner of, or holding or operating the Cornucopia Mines, but said mines and properties on said date were held by and in the possession of C. E. S. Wood, as trustee, and were being conducted and operated by Robert M. Betts as lessee: that at the time as heretofore alleged, when said John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, filed and instituted his action for damages against said Robert M. Betts, as receiver of Cornucopia Mines Company of Oregon, all of the mines and properties, real and personal, which the said John L. Bisher, Jr., by his said guardian, now asks to have set aside and be permitted to intervene herein, were owned by and were in the possession, for a valuable consideration, of The Cornucopia Mines Company of New York, a corporation duly organized under the laws of the State of New York, and doing business as such under the laws of the State of Oregon in full compliance therewith as aforesaid.

WHEREFORE, complainant and respondent in this action having fully presented the facts herein to the Court, respectfully prays that intervenor's petition to intervene in this cause be denied, and that complainant and respondent herein have such other

and further relief as may be meet and equitable in the premises, and for their costs.

EMMETT CALLAHAN,
Attorney for Respondent.

District of Oregon,
County of Multnomah.—ss.

Due service of the within Reply to show cause is hereby accepted in Multnomah County, Oregon, this 20th day of June, 1913, by receiving a copy thereof. duly certified to as such by Emmett Callahan, attorney for respondent.

BOOTHE & RICHARDSON,
Attorneys for Intervenor.

Filed June 20th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 12th day of December, 1913, there was duly filed in said Court, and cause, a Motion to Strike Out Parts of Answer to Order to Show Cause, in words and figures as follows, to-wit:

Motion to Strike Out.

Comes now the intervener John L. Bisher, Jr., by John L. Bisher, his Guardian ad litem, with leave of the Court first had and obtained, and within the time allowed by the Court therefor, and moves the Court to strike out, as insufficient to comply with

the order and rule of this Court to show cause, and as insufficient in law or otherwise to comply with the order of the Court therefor, any and all of the following portions of the answer which was made by Hamilton Trust Company and Robert M. Betts, receiver, in response to the order of this Court to show cause, to-wit:

First.

Intervener moves to strike out from such answer any and all of the first paragraph thereof, for the reason that it is insufficient to comply with the order of the Court, and is insufficient in law.

Second.

Intervener moves to strike out from such answer any and all of the sixth paragraph thereof, for the reason that it is insufficient to comply with the order of the Court, and is insufficient in law.

Third.

Intervener moves to strike out from such answer any and all of those portions of the seventh paragraph of such pretended answer, for the reason that they are insufficient to comply with the order of the Court, and are insufficient in law, as follows, to-wit:

(1) All that portion of paragraph seven of such answer, on page 4 thereof, commencing with the words "That under said judgment and decree," and

ending with the words "Hereby made a part hereof and marked Exhibit G."

(2) Any and all of that portion of paragraph seven of such answer, found on page 4, commencing with the words "That on the 6th day of August, 1912," and ending with the words "Hereby made a part hereof and marked Exhibit H."

(3) Any and all of that portion of said paragraph seven, on page 4 thereof, commencing with the words "That on the 30th day of August, 1912," and ending with the words "And said suit is now pending in this Court."

(4) Any and all of that portion of such paragraph seven, found on page 5 of said answer, commencing with the words "That at the sale of said property," and ending with the words "Master's sale as aforesaid as Trustee."

(5) Any and all of that portion of paragraph seven of such answer, found on page 6 thereof, commencing with the words "That at said sale of the properties," and ending with the words "On the 10th day of October, 1912, at 2:40 o'clock P. M. of said day."

(6) Any and all of that portion of said paragraph seven of said answer, on page 6 thereof, commencing with the words "That thereafter, on the 7th day of October, 1912, C. E. S. Wood, as trustee," and ending with the words "Is in no wise connected with the Cornucopia Mines Company of Oregon, respondent in this action."

(7) Any and all of that portion of paragraph seven of such answer, on page 7 thereof, commencing with the words "That said Cornucopia Mines," and ending with the words "To the 1st day of November, 1912."

(8) Any and all of that portion of said paragraph seven of such answer, on page 7 thereof, commencing with the words "That the alleged injury to John L. Bisher, Jr.," and ending with the words "By the said Robert M. Betts, as lessee."

(9) Any and all of that portion of paragraph seven of such answer, found on page 7 thereof, commencing with the words "That the foreclosure proceeding in the cause," and ending with the words "Until theday of November, 1912."

(10) Any and all of that portion of paragraph seven of such answer, on page 7 thereof, commencing with the words "That on the 28th day of July, 1912," and ending on page 8 thereof with the words "And were being conducted and operated by Robert M. Betts, as lessee."

(11) Any and all of that portion of paragraph seven of said answer, on page 8 thereof, commencing with the words "That at the times as heretofore alleged," and ending with the words "State of Oregon in full compliance therewith, a aforesaid."

And,

Fourth.

Intervener moves to strike out the whole and every part of such answer for the reason that it is

insufficient to comply with the order and rule of this Court to show cause, and is insufficient in law, and that such answer does not comply with the rule or order of the Court to show cause and does not show cause.

This motion is made and based and will be heard upon the records and files, papers and preceedings, and the minutes of this Court in the suits and actions in the following causes pending in this Court, to-wit:

Hamilton Trust Company vs. The Cornucopia Mines Company, et al, and John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, vs. Robert M. Betts, receiver.

BOOTHE & RICHARDSON and
CHARLES A. JOHNS,

Attorneys for Intervener John L. Bisher,
Jr., by John L. Bisher, his guardian
ad litem.

State of Oregon,
County of Multnomah.—ss.

Due and legal service of the within motion is hereby acknowledged and accepted in said county and state by the receipt of a duly certified copy thereof on this 12th day of December, 1913.

C. E. S. WOOD,
of Attorneys for Hamilton Trust Company
and Robert M. Betts, Receiver.

Filed December 12th, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on Monday, the 22nd day of December, 1913, the same being the 42nd Judicial day of the regular November, 1913, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order to Pay Judgment.

Now, on this 22nd day of December, 1913, this cause coming on to be heard on motion of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, intervener, to strike out certain portions and the whole of the answer of Hamilton Trust Company and The Cornucopia Mines Company of Oregon and Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon, for the reason that each of said respective answers is insufficient to comply with the order and rule of this court to show cause, and is insufficient in law or otherwise to comply with the order and rule of this Court to show cause, and is insufficient in law or otherwise to comply with the order of the Court therefor; The Hamilton Trust Company, complainant, and the said Robert M. Betts, as receiver, appearing by Wood, Montague & Hunt, as their attorneys, and The Cornucopia Mines Company of Oregon appearing by Emmett Callahan, as its attorney, and John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, appearing by Boothe & Richardson and Charles A. Johns, as his attorneys, and the Court having heard

the arguments of respective counsel, and being fully advised, it is therefore, ORDERED, ADJUDGED AND CONSIDERED by the Court that the said motion of intervener John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, shall be, and in all things and respects is, hereby sustained.

And if further appearing to the satisfaction of the Court, from the records, files and proceedings in this suit:

I.

That on the 5th day of December, 1911, a suit in equity was filed in this Court to foreclose a mortgage for the sum of Three Hundred and Ninety-nine odd Thousand Dollars, in which Hamilton Trust Company was complainant, and The Cornucopia Mines Company of Oregon, Valentine Laubenheimer and S. W. Holmes were respondents, in which the Court had and acquired jurisdiction of the defendants and the subject-matter of the suit.

II.

That in such suit the complainant, said Hamilton Trust Company, filed a motion based upon the bill of complaint and the affidavit of Emmett Callahan, attached thereto and made a part thereof, asking for the appointment of a receiver, and that on the 21st day of December, 1911, an order of the Court was made appointing a receiver, and that thereafter, and on the 21st day of January, 1912, Robert M. Betts was duly appointed a receiver of the said The Cor-

nucopia Mines Company of Oregon, and duly qualified as such.

III.

That among other things it was recited in and appears from the affidavit of the said Emmett Calahan:

“That it is necessary that said mines should continue in operation and development; that if said mines were closed down and ceased to be operated and developed, great irreparable injury and loss would occur by said mines being closed down and not operated; that if said mines are not continued in operation and development, the stamp mill, electric power plant, engines, pumps and other machinery will greatly deteriorate in value and loss; that the tunnels, shafts, winzes, stopes and other underground openings and workings of said Cornucopia Mining claims and mines would cave in and be greatly damaged, and great loss follow by the action of the elements and the flooding of said openings in said mines and mining claims filling up with water, deteriorating, destroying and damaging said mines and mining claims, its buildings and operating plants in a reasonably estimated sum of at least from forty to one hundred thousand dollars.”

IV.

That at the request of said Hamilton Trust Company, and based upon such motion and affidavit and the records and files in this suit, and on the 21st day of December, 1911, the Court made an order appoint-

ing Robert M. Betts receiver of all the property and authorized and directed him to take immediate possession of all and singular the said real and personal property, and to continue the operation of said mining property and every part and portion thereof as heretofore operated, and to preserve the said property in proper condition and keep the same in repair, and to employ such persons and make such payments and disbursements as may be needful and proper in doing so, and directing that he should execute a bond in the sum of \$2,500, and that The Cornucopia Mines Company of Oregon and all other persons or corporations, should turn over and deliver to said receiver any and all of said property into his hands and into his control. Further, that out of the moneys:

“Which come into the hands of said receiver from the operation of said property, or otherwise, he shall pay the necessary expenses incident to the operation of the said property and hold the remainder, if any there be, subject to the order of the Court herein, and this appointment is made on condition that the said Robert M. Betts shall not receive any compensation for his services as such receiver from any of the parties herein, and that he obey the orders of the Court as made from time to time.”

That such bond was executed and that the receiver qualified and entered upon the discharge of his duties under the said order of the Court, and was such receiver and engaged in the operation of the mine and discharge of his said duties during the

month of July, 1912, and at the time of the injury to the said John L. Bisher, Jr., as hereinafter stated.

V.

That on the 30th day of April, 1912, a decree of foreclosure was duly entered in said suit, and that it was provided in such decree that the proceeds of such sale should be applied as follows:

First.

To the expenses of the sale of said property.

Second.

To the expenses of the receivership herein.

Third.

The costs of this suit.

Fourth.

Complainant's attorneys' fees.

Fifth.

The taxes and other expenses incurred and paid pursuant to the provisions of said mortgage.

Sixth.

The balance to the bond holders.

Seventh.

Any amount remaining, to The Cornucopia Mines Company of Oregon.

And it was therein further provided :

“At the time of the execution of said deed, said Robert M. Betts as receiver shall also make, execute and deliver a good and sufficient deed of conveyance of any and all property of the said company; that upon the execution and delivery of the conveyance, as aforesaid, the purchaser shall be let into possession of all of the said property.”

VI.

The decree further provides :

“That any purchaser of the property at such sale shall be entitled to use and apply, in making payment of the purchase price, any of the outstanding bonds secured by said mortgage, as therein provided, but a sufficient portion of the purchase price shall be paid in cash to provide funds for the payment of all costs and expenses incurred herein, and that the Master return the cash proceeds of said sale to the clerk of this Court, and that the same be paid to the clerk of this Court, and that upon the completion and confirmation by the Court of the sale made under and in pursuance of this decree. the said clerk of this Court shall pay out said money as above provided.”

VII.

That it appears from the returns of the sale of the property, C. E. S. Wood, of Portland, Oregon, as trustee for the bond holders, bid the sum of \$432,000, as evidenced by bonds numbered from 1

to 600 of the par value of \$500 each, with accrued interest thereon.

VIII.

That while the said Robert M. Betts, as receiver, was in the possession of the said property, as such, and engaged in the operation thereof, and in the month of July, 1912, he employed John L. Bisher, Jr., to do certain work for him as receiver, and that the said John L. Bisher, Jr., entered upon the discharge of his duties, and was in such employ at the time he sustained the injuries of which he complains, as hereinafter stated.

IX.

That on or about the 29th of July, 1912, and while the said John L. Bisher, Jr., was in the employ of the said Robert M. Betts, as receiver, and through the negligence of the said receiver, the said John L. Bisher, Jr., received certain physical injuries; and that by reason thereof, and based thereon, said John L. Bisher was by this Court appointed guardian ad litem of the said John L. Bisher, Jr., and, with leave of the Court first had and obtained, commenced and prosecuted an action in this Court against the said Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon; and based upon the allegations of the complaint as to such injuries, and the pleadings, and after a trial before a jury in this Court, such jury returned a verdict against the said Robert M. Betts as receiver of The Cornucopia Mines Company of Oregon, and in favor

of the said John L. Bisher, guardian ad litem of John L. Bisher, Jr., for the sum of \$12,500; and that based upon such verdict a judgment against the said Robert M. Betts, as receiver, in favor of said guardian, was duly entered in this Court on the 11th day of April, 1913, for the sum of \$12,500, and the costs and disbursements of the action, taxed at \$....., and that no part of such judgment has been paid, and that the same is now in full force and effect.

X.

That it appears from the report of the receiver that there are no funds in his hands with which to pay said judgment or any part thereof, and that it further appears, that at the time of making the said sale, there were no funds paid into Court, or to any person by the bond holders, or any other person, for the payment or satisfaction of said judgment, or any part thereof, and that no provision whatever has been made for the payment or satisfaction of said judgment.

XI.

That the injuries which the said John L. Bisher, Jr., sustained and which are the basis of the said judgment against the said receiver, were sustained in the operation and development of the property by the receiver, under the order of the Court appointing him as such.

XII.

That on the 1st day of April, 1905, The Cornu-

copia Mines Company, of Oregon, issued its certain bonds numbered from 1 to 600 inclusive, of the par value of \$500 each, payable on the 1st day of April, 1911, at and to The Hamilton Trust Company, in the City and State of New York, with interest from October 1st, 1905, at the rate of six per cent per annum, payable semi-annually, and that to secure the payment of said bonds, which were issued and sold to the respective purchasers thereof, the said Mines Company made, executed, acknowledged and delivered to the said Hamilton Trust Company, its certain real mortgage upon any and all of the property then owned, or thereafter to be acquired, by the said The Cornucopia Mines Company of Oregon, lying and being situate in the County of Baker and State of Oregon, and described as follows, to-wit:

For description of property described in this order, see Bill of Complaint, pages to

XIII.

That among other things the decree rendered in this suit ordered and directed that the said property should be sold and the proceeds thereof paid out and disbursed as provided for in paragraph V of this order; and that no funds were provided or paid into Court, or elsewhere, for the satisfaction of the said judgment in favor of the said John L. Bisher, guardian ad litem, or any part thereof.

XIV.

That the said judgment in favor of the said John L. Bisher, guardian ad litem of John L. Bisher, Jr.,

together with any claim which he may have arising from or growing out of the injuries sustained by the said John L. Bisher, Jr., and upon which said judgment is based, is an operating charge or expense of the said receiver, and is a superior lien to any lien which was created or existed in favor of the said Hamilton Trust Company against the said The Cornucopia Mines Company of Oregon by reason of the execution of such trust deed or mortgage, or any foreclosure decree rendered thereon, and the issuance and sale of said bonds, and the whole and every part thereof; and is superior to any lien of any person or persons holding any one, or either or all of said bonds issued under such trust deed or mortgage, and the said judgment is entitled to and should be paid in full from and out of any sale of the property or any part thereof, based upon the decree rendered in this Court in favor of the said Hamilton Trust Company and against the said The Cornucopia Mines Company of Oregon; and that the terms and conditions of such decree have not been carried out and have not been followed in this: That no funds were provided or paid into the Court for the payment or satisfaction of such judgment in favor of John L. Bisher, guardian ad litem, or for the release and satisfaction of the claim of John L. Bisher, guardian ad litem, arising from or growing out of the injuries sustained by the said John L. Bisher, Jr., on which said judgment was based, and any lien created by the said trust deed or mortgage is hereby subrogated to the lien of the said John L. Bisher, guardian ad litem.

XV.

That the judgment so rendered in favor of the said John L. Bisher, guardian ad litem of John L. Bisher, Jr., and the claim upon which it was based, are for injuries which the said John L. Bisher, Jr., sustained while in the employ of the said Robert M. Betts, receiver, at and during the time the said Robert M. Betts, receiver, was operating and preserving the property, as such, under the orders and directions of the Court.

XVI.

That the said judgment and the claim upon which it is based, is a superior lien on any and all of the property, both real and personal, which the said receiver purchased or acquired during his receivership, to any mortgage or other lien in favor of the said Hamilton Trust Company, or any bond holders secured by such trust deed, and that the said mortgage or trust deed in favor of the said Hamilton Trust Company is hereby subrogated to such judgment lien.

XVII.

That from and out of any money paid to the clerk of this Court, no part thereof should have been paid out or distributed on any claim or to any persons for any costs or expenses until such time as first, the expenses of the sale of said property, and, second, any and all of the expenses of the receivership in said suit had been paid in full, as provided in the decree in this suit.

XVIII.

That the amount of the claim of said John L. Bisher, guardian ad litem of John L. Bisher, Jr., as evidenced by his judgment against the said Robert M. Betts, receiver, together with the claim upon which it is based, is a part and parcel of the expenses of the receivership herein, and should have been paid or satisfied in full prior to the making of any payment or distribution on the costs of the suit, complainant's attorneys' fees, taxes and other expenses incurred and paid pursuant to the provisions of said mortgage, or to any bond holders, or to The Cornucopia Mines Company of Oregon.

XIX.

That the sale of the said property to the said C. E. S. Wood, trustee for the bond holders, and any conveyance made thereunder, was made, and any title acquired thereby is, subject and inferior to the judgment so rendered in favor of the said John L. Bisher, guardian ad litem of John L. Bisher, Jr., and the claim upon which it is based, against the said Robert M. Betts, receiver, and to any person or corporation as the successor in interest to the said C. E. S. Wood under the said sale.

XX.

That on the 5th day of December, 1911, The Hamilton Trust Company, complainant, vs. The Cornucopia Mines Company of Oregon, et al, respondents, filed its bill of complaint in this Court. praying for a decree in foreclosure against the prop-

erty of the said The Cornucopia Mines Company of Oregon, above described, and that process was issued on the 7th day of December, 1911, and that on said day a motion and application for a receiver was filed in this Court, and that on the 23rd day of December, 1911, all the respondents were duly served, and on the 2nd day of January, 1912, Robert M. Betts filed a good and sufficient bond as receiver and accepted his trust, and on the 30th day of April, 1912, a judgment and decree of foreclosure in favor of the said Hamilton Trust Company and against the said The Cornucopia Mines Company of Oregon, et al, respondents, was duly made, filed and entered in said action, decreeing and foreclosing the mortgage bonds set forth in complainant's bill of complaint. That under said judgment and decree a sale was had of said property on the 29th day of June, 1912, by Ed. Rand, special master, duly appointed to make such sale under said judgment and decree of foreclosure, and that said Ed. Rand duly qualified as such under the appointment of this Court, and made a sale of the said property after notice, and on the 5th day of July, 1912, made and filed a report of such sale with the clerk of this Court. That on the 6th day of August, 1912, this Court made an order confirming said sale of said property. That on the 30th day of August, 1912, Robert M. Betts, as receiver, prepared his report as such receiver, and filed the same in this Court with his motion thereon that said account be examined and allowed and the receiver discharged. That the said property was so sold on the 29th day of June, 1912,

in front of the Court House in Baker City, Oregon, to the said C. E. S. Wood, as trustee, for the bond holders under such trust deed or mortgage.

XXI.

That the injuries sustained by the said John L. Bisher, Jr., were sustained on the 29th day of July, 1912, and that upon a good and sufficient petition, and by leave of the Court, John L. Bisher was appointed by this Court guardian ad litem of the said John L. Bisher, Jr., and on the 12th day of October, 1912, the said John L. Bisher, as guardian ad litem of the said John L. Bisher, Jr., commenced his action in this Court to recover for the injuries sustained by the said John L. Bisher, Jr., and issued process and the same was served, and the defendants therein appeared in this Court, and that thereafter, and on the 11th day of April, 1913, the said cause was tried and the said verdict returned by a jury therein.

XXII.

That on the 20th day of November, 1912, said Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon, executed to The Cornucopia Mines Company of New York, a corporation of New York, his certain deed to any and all of the property above described, which deed was filed for record on the 20th day of December, 1912, and recorded in Book 77 of Deeds, page 632, in the County Clerk's office of Baker County, Oregon, and that the deed so executed was and is the deed mentioned.

and which he was directed to execute, in the foreclosure decree.

XXIII.

That the final account of the said Robert M. Betts, as receiver, has not been approved, and he has not been discharged as such receiver.

And the Court being now fully advised, and based upon such findings and upon the records, files and proceedings in this suit, it is, therefore, ordered, adjudged and considered by the Court:

First.

That within thirty days from this date, from and out of the funds which may be in his hands, the receiver is hereby ordered to pay a sufficient amount to the clerk of this Court to satisfy the said judgment in favor of the said John L. Bisher, guardian ad litem of John L. Bisher, Jr.

Second:

That should the said receiver not have sufficient funds in his hands to satisfy said judgment in full within said time, then and in that event The Hamilton Trust Company, complainant, or the bond holders at the time of the rendition of such decree, be and are hereby required to pay to the clerk of this Court, within sixty days from this date, a sufficient sum of money to satisfy such judgment in full.

And for failure or neglect to pay such money to the clerk of this Court within said time, said John

L. Bisher, guardian ad litem of John L. Bisher, Jr., shall have and is hereby granted leave of this Court, on the usual notice therefor, to apply for and obtain an order setting aside the said sale to the said C. E. S. Wood, trustee for the bond holders, and to have the property resold; or second, to apply to the Court for an order authorizing and directing the sale of said property to satisfy the amount of such judgment; or third, for any other or different order or process to enforce and collect such judgment as the Court may think right and proper.

Done and dated this 22nd day of December, 1913.

CHAS. E. WOLVERTON,
Judge.

To the making and granting of such order, and the whole and every part thereof, counsel for Hamilton Trust Company, and for Robert M. Betts, receiver, and for The Cornucopia Mines Company of Oregon, then and there duly excepted, which exception was duly allowed by the Court.

CHAS. E. WOLVERTON,
Judge.

Filed December 22nd, 1913.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 8th day of June, 1914, there was duly filed in said Court, a Motion to Vacate Sale of Property, in words and figures as follows, to-wit:

Motion to Vacate Sale.

Comes now John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, by and through Boothe & Richardson and Charles A. Johns, his attorneys, and moves the Court for an order:

First:

To vacate and set aside the sale of the property, mentioned and described in the bill of complaint, to C. E. S. Wood, trustee for the bondholders, and to have the property resold and the proceeds of said sale applied, first, to the expenses of the sale of said property; and second, to the expenses of the receivership herein, including the amount of the judgment rendered in this Court in favor of the said John L. Bisher, Jr. by John L. Bisher, his guardian ad litem, against Robert M. Betts as receiver of The Cornucopia Mines Company of Oregon. Or

Second:

For an order of this Court, authorizing and directing the sale of said property, or so much thereof as may be necessary to satisfy the amount of such judgment, and that the purchaser at such sale be let into possession of the property sold, and that the purchaser at such sale shall have and acquire a title to the property which shall be superior and prior in time and right to any sale of the property which was heretofore made by the said Robert M. Betts as receiver to the said C. E. S. Wood, trustee, or any other person. Or

Third:

For any other or different order or process to enforce and collect such judgment as the Court may think right and proper.

Such motion is based upon the files, records, orders and proceedings of this Court, and in particular on the order of the Court sustaining that certain motion made and entered on or about the 22nd, day of December, 1913, by his Honor Charles E. Wolverton, Judge of said Court, and of which motion you will please take notice.

BOOTHE & RICHARDSON and
CHARLES A. JOHNS,

Attorneys for John L. Bisher, Jr., by John
L. Bisher, his Guardian ad Litem.

State of Oregon,
County of Multnomah.—ss.

Due service of the within Motion by a receipt of a copy thereof is hereby admitted in Multnomah County, Oregon, this 6th day of June, 1914.

C. E. S. WOOD,
Attorney for

EMMETT CALLAHAN,
Attorney for

Filed June 8th, 1914.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 8th day of June, 1914, there was duly filed in said Court, a Notice of Motion to Vacate Order of Sale, in words and figures as follows, to-wit:

Notice of Motion.

To Hamilton Trust Company and Robert M. Betts, as Receiver, and to Wood, Montague & Hunt, your attorneys; and to The Cornucopia Mines Company of Oregon, and Robert M. Betts, Receiver, and to Emmett Callahan, your attorney:

You and each of you will please take notice, and are hereby notified, that on Monday, the 15th day of June, 1914, at the hour of 10 o'clock A. M., or as soon thereafter as it can be heard, the intervener, John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, will apply to the Court for an order of the Court:

First:

To vacate and set aside the sale of the property, mentioned and described in the bill of complaint, to C. E. S. Wood, trustee for the bondholders therein, and to have the property resold and the proceeds of said sale applied to the satisfaction of the judgment rendered in this Court in that certain action wherein the said John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, was plaintiff,

and the said Robert M. Betts, as receiver, was defendant. Or

Second:

For an order authorizing and directing the sale of said property, or so much thereof as may be necessary to satisfy the amount of said judgment. Or

Third:

For any other or different order or process to enforce and collect such judgment and satisfy the same, as the Court may think right and proper at such hearing.

BOOTHE & RICHARDSON and
CHARLES A. JOHNS,
Attorneys for John L. Bisher, Jr., by John
L. Bisher, his Guardian ad Litem.

State of Oregon,
County of Multnomah.—ss.

Due service of the within Notice of Motion by a receipt of a copy thereof is hereby admitted in Multnomah County, Oregon, this 6th day of June, 1914.

C. E. S. WOOD,
Attorney for

EMMETT CALLAHAN,
Attorney for

Filed June 8th, 1914.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on Friday, the 10th day of July, 1914, the same being the 5th Judicial day of the regular July, 1914, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Decree.

This cause coming on to be heard in open Court on this 15th day of June, 1914, before His Honor, Charles E. Wolverton, Judge, on motion and application of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, intervener, for an order of this Court to either:

First.

Vacate and set aside the sale of the property, mentioned and described in the complainant's bill of complaint, by Ed. Rand, Special Master, to C. E. S. Wood, trustee for the bondholders; or

Second.

For an order authorizing and directing a sale of said property, or so much thereof as may be necessary, to satisfy the amount of the judgment of John L. Bisher, guardian ad litem of John L. Bisher, Jr., against Robert M. Betts, receiver; or

Third.

For any other or different order or process to enforce and collect said judgment as the Court may think right and proper at such hearing.

Hamilton Trust Company, complainant, and Robert M. Betts, receiver in this suit, appearing by C. E. S. Wood, of the firm of Wood, Montague & Hunt, its and his attorneys; The Cornucopia Mines Company of Oregon, respondent, appearing by Emmett Callahan, its attorney; and John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, appearing by Boothe & Richardson and Charles A. Johns, his attorneys, and the Court having heard the arguments and statements of counsel for the respective parties, and having read and examined the records, files and proceedings in this suit, from which it appears and the Court further finds:

I.

That at the sale of the property of The Cornucopia Mines Company, of Oregon, described in the bill of complaint in this suit, C. E. S. Wood, as trustee for the bondholders, at such sale bid the sum of Four Hundred and Thirty-two Thousand (\$432,000) Dollars as the purchase price, which included the total judgment in the foreclosure and costs thereof.

That on the 7th day of October, 1912, the said Ed. Rand, as Special Master appointed by the Court in this suit, executed his certain deed to the said C. E. S. Wood, as purchaser and trustee for the bondholders under the trust deed or mortgage for any and all of the property therein mentioned and described, and as particularly described in Finding No. XII, which was made by this Court on the 22nd day of December, 1913, and that the said C. E. S.

Wood, who became such purchaser as such trustee, at all such times has been, and is now, one of the attorneys for Hamilton Trust Company, complainant in this suit, and at all times since the application of John L. Bisher, as guardian ad litem, to intervene in this suit was filed, has been and is now one of the attorneys for Robert M. Betts as receiver, that said deed so executed by the said Ed. Rand was delivered and filed for record in the office of the County Clerk of Baker County, Oregon, on the 10th day of October, 1912, and was duly recorded in Book 77 Record of Deeds of said County.

II.

That on the 20th day of November, 1912, Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon in this suit, executed to The Cornucopia Mines Company of New York, a New York corporation, his certain deed as such receiver, for that certain water right appropriation, Application No. 2056 to the State of Oregon through its State Engineer, John H. Lewis, and Permit No. 1060, to appropriate the public waters of the State of Oregon, as follows:

Said water appropriation is taken out of Pine Creek, near the Town of Cornucopia, Baker County, Oregon, for the purpose of generating electric power for operating the stamp mills, machinery and other works and lighting the Cornucopia mines at or near the Town of Cornucopia, Baker County, Oregon. That the point of diversion of said water appropria-

tion is located 38 chains S. 66 degrees 30' W. of N. E. corner of Section 3, Tp. 7 S. R. 45 E., Willamette Meridian, being within the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7 S. R. 45, E. W. M., in Baker County, Oregon. Said water appropriation is to be taken from said Pine Creek at foregoing described point of appropriation, by an intake into a flume terminating in the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7 S. R. 45, E. W. M., in Baker County, Oregon; the name of the ditch or flume is named Cornucopia Mines Company Flume.

Electric power is to be generated by an electric power plant with Pelton wheels located upon the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M.

Said water appropriation and water right, after being used for said power purposes, is returned to said described Pine Creek at a point S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Tp. 7 S. R. 45, E. W. M., in Baker County, Oregon, which said application and permit were received in the office of John H. Lewis, State Engineer of the State of Oregon, on the 3rd day of February, 1912, and approved by him on the 28th day of February, 1912.

That such deed was duly recorded in the office of the County Clerk of Baker County, Oregon, on December 20th, 1912, in Book 77, Record of Deeds of said County on pages 632 et sequor.

That an amendment of said application No. 2056 and Permit No. 1060 was received in the office of the State Engineer of the State of Oregon on the 27th day of December, 1913, and was recorded in

Miscellaneous Records of such office in Volume 1, Page 292, and that in such amendment the point of diversion is amended to read: "23.13 chains south 48 degrees 38' E. of the center of section line between Secs. 34 and 27, T. 6, S. R. 45, E. W. M., being within the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 34, T. 6, S. R. 45, E. W. M.," instead of "38 chains south 66 degrees 30' W. of the N. E. corner of Sec. 3, T. 7, S. R. 45, E. W. M., being within the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 3, T. 7, S. R. 45, E. W. M.," as indicated by original permit No. 1060.

III.

That the said Robert M. Betts as receiver has never, or at any time, executed any deed to any person or corporation of the property specifically mentioned and described in the decree rendered in this suit in favor of Hamilton Trust Company and against The Cornucopia Mines Company of Oregon; and that the said Robert M. Betts as Receiver has never, or at any time, under the said decree, or under any of the terms or conditions thereof, executed any other or different deed to any person or corporation for any other or different property than the property mentioned and described in said paragraph II, and as therein stated, and that no order was ever petitioned for or made by this Court authorizing or directing the said receiver to execute and deliver any deed or convey any property to any person or corporation unless it was authorized by the decree foreclosing the trust deed or mortgage,

executed by the said The Cornucopia Mines Company of Oregon to the said Hamilton Trust Company.

IV.

That on the 20th day of February, 1912, Alexander McDonald executed to the said The Cornucopia Mines Company of Oregon his certain warranty deed, with full covenants of title, of the following described premises, to-wit:

The following described parcel of real estate, situate, lying and being in the County of Baker, and State of Oregon, to-wit:

Beginning at a point on the half section line that is north 500 ft. from the south line of Section, thence west 484 ft., thence north 450 ft., thence E. 484 ft., thence south 450 ft. to place of beginning, containing five acres, and being a part of the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M.

Together with the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and also all his estate, title and interest, at law and in equity therein or thereto to the use of the waters of Pine Creek running and flowing through the foregoing described land to be used for any useful purpose that said corporation may use same.

That such deed was recorded on the 5th day of March, 1912, in Book 76 Record of Deeds in the office of the County Clerk of Baker County, Oregon.

V.

That on the 16th day of July, 1912, the said Alexander McDonald executed to the said The Cornucopia Mines Company, of Oregon, his certain other warranty deed, with full covenants of title for the following described premises, to-wit:

The following described parcel of real estate situate lying and being in the County of Baker, and State of Oregon, to-wit:

Beginning at a point on the half section line that is north 300 ft. from the south line of Sec. 3; thence W. 484 ft., thence N. 450 ft., thence E. 484 ft., thence S. 450 ft. to place of beginning, containing five acres, and being a part of the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M.

Also a right of way for the pipe line of The Cornucopia Mines Company of Oregon, over and through that certain portion of the lands described as follows: The S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec., for said distance of 3,500 ft., more or less.

The above described premises and right of way are in Tp. 7, S. R. 45, E. W. M., said pipe line to be used for electric and power purposes.

Together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining; and also all his estate, title and interest, at law and in equity, therein or thereto to the use of the waters of Pine Creek running and flow-

ing through the foregoing described land to be used for any useful purpose that said Corporation may use same.

That on the 16th day of August, 1912, such deed was recorded in Book 77 Record of Deeds in the office of the County Clerk of Baker County, Oregon.

VI.

That on the 1st day of August, 1912, the said Alexander McDonald executed to the said The Cornucopia Mines Company of Oregon, his certain other warranty deed, with full covenants of title, for the following described premises, to-wit:

All the following bounded and described real property situated in the County of Baker and State of Oregon:

Beginning at a point on the half section line that is north 300 ft. from the south line of Section 3, thence W. 660 ft., thence N. 330 ft., thence W. 660 ft., thence S. 330 ft., to the place of beginning, containing 5 acres and being a part of the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. Willamette Meridian, also a right of way 25 ft., in width for pipe line and transmission line from the south line of N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ through the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M., and to be located according to surveys, agreed upon by said Alexander McDonald and Robert M. Betts,

receiver for The Cornucopia Mines Co. of Oregon, the length of his line is not to exceed 3,700 ft.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and also all my estate, right, title and interest in and to the same, including dower and claim of dower.

That such deed was duly recorded on the 7th day of August, 1912, in Book 77 Record of Deeds in the office of the County Clerk of said Baker County, Oregon.

VII.

That none of the property mentioned and above described in either of the deeds from Alexander McDonald to the said The Cornucopia Mines Company of Oregon is specifically mentioned or described in the said trust deed or mortgage executed by the said The Cornucopia Mines Company of Oregon to the said Hamilton Trust Company. And that each of said deeds were so executed by the said Alexander McDonald after the said Robert M. Betts became receiver and during the time that he was such receiver.

VIII.

That on the 11th day of April, 1913, John L. Bisher, as guardian ad litem of John L. Bisher, Jr., duly recovered a judgment against the said Robert M. Betts as receiver of The Cornucopia Mines Company of Oregon, for the sum of \$12,500.00, and his

costs and disbursements in said action taxed at the sum of \$282.70; and that no part of said judgment has been paid and that it is now in full force and effect.

IX.

That on the 30th day of August, 1912, said Robert M. Betts filed his report as receiver, and that such report has never been approved and that he has never been discharged as receiver; and that he is now receiver in said suit.

X.

That there are no funds in the hands of the receiver with which to pay said judgment or any part thereof.

XI.

That at the time of the injury upon which the judgment against the receiver is based, the said John L. Bisher, Jr., was in the employ of the said Robert M. Betts as receiver, and that the said Robert M. Betts, as receiver, was in the possession of, and operating, maintaining and preserving the property under the orders of this Court, and that the claim for such injuries was based upon and arises from and grows out of an operating charge and expenses against the said property under and during such receivership; and as such, the claim of the said John L. Bisher, as guardian ad litem of John L. Bisher, Jr., against Robert M. Betts, as receiver, and the judgment upon which it is based,

is superior in right and prior in time to any lien created by the mortgage or deed of trust executed by The Cornucopia Mines Company of Oregon to the said Hamilton Trust Company, as to any and all property specifically mentioned and described in such trust deed or mortgage, and as to any and all property thereafter acquired by the said Robert M. Betts, as receiver, or any property thereafter acquired by the corporation during his receivership, or any improvements or betterments placed thereon.

XII.

That the water right appropriation Application No. 2056 and Permit No. 1060, and as amended on December 27, 1913, mentioned and described in Finding No. II, was acquired under and during the receivership, and is not specifically mentioned or described in the trust deed or mortgage, and should be property and assets in the hands of the receiver for the purpose of paying and discharging the debts and operating expenses of the receiver, including the claim and judgment of John L. Bisher, guardian ad litem.

NOW, THEREFORE, based upon the foregoing Findings and the previous Findings made by this Court on December 22nd, 1913, and upon the records, files and proceedings in this Court and in this suit, and testimony taken in open Court, and the knowledge of the Court itself, and the statements and arguments of counsel made in this Court, it is hereby ORDERED, ADJUDGED and DECREED:

I.

That the said claim of John L. Bisher, guardian ad litem of John L. Bisher, Jr., and the judgment based upon such claims rendered on the 11th day of April, 1913, for the sum of \$12,500.00 and the costs and disbursements therein taxed at the sum of \$282.70, with interest thereon from that date at the rate of 6% per annum, and arising from and growing out of the injuries sustained by the said John L. Bisher, Jr., on the 29th day of July, 1912, while in the employ of Robert M. Betts, receiver, be and is hereby adjudged to be a prior and superior lien, both in time and right, to any lien which existed or was created by the execution of that certain trust deed or mortgage by the said The Cornucopia Mines Company of Oregon to the said Hamilton Trust Company, on or about the 1st day of April, 1905, to secure the payment of Three Hundred Thousand (\$300,000) Dollars, evidenced by bonds numbered from 1 to 600 inclusive of the par value of Five Hundred (\$500) Dollars each, together with the coupons attached thereto, and which was decreed to be foreclosed in this suit on the 30th day of April, 1912, on any and all of the following property specifically mentioned and described in such trust deed or mortgage, to-wit:

(Description of property sold by Master herein see pages of Complainants Bill, where property sold is fully described.)

And that the purchaser or purchasers, or anyone acquiring or claiming to acquire title to said prop-

erty by virtue of the sale thereof, and the confirmation of such sale, and the execution of the deed therefor, and any successor in interest thereof, takes and holds title to the said premises subject to the said claim and said judgment, and that any such title so acquired by or through such sale is subject and inferior to said claim and judgment.

II.

That the said claim of John L. Bisher, guardian ad litem, and the said judgment upon which it is based, be and is hereby adjudged to be a prior and superior lien, both in time and right to any lien which existed or was created by the execution of the said trust deed or mortgage on any and all of the following described property, to-wit:

That certain water right appropriation, application No. 2056 to the State of Oregon, through its State Engineer, John H. Lewis, and Permit No. 1060 and as amended on December 27th, 1913, to appropriate the public waters of the State of Oregon as follows:

Said water appropriation is taken out of Pine Creek, near the Town of Cornucopia, Baker County, Oregon, for the purpose of generating electric power for operating the stamp mills, machinery and other works and lighting the Cornucopia Mines at or near the Town of Cornucopia, Baker County, Oregon. That the point of diversion of said water appropriation is located 38 chains S. 66 degrees 30' W. of N. E. corner of Section 3, Tp. 7, S. R. 45, E.

Willamette Meridian, being within the N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M., in Baker County, Oregon. Said water appropriation is to be taken from said Pine Creek at foregoing described point of appropriation, by an intake into a flume terminating in the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M., in Baker County, Oregon; the name of the ditch or flume is named Cornucopia Mines Company Flume.

Electric power is to be generated by an electric power plant with Pelton wheels located upon the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M.

Said water appropriation and water right, after being used for said power purposes, is returned to said described Pine Creek at a point S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Tp. 7, S. R. 45, E. W. M., in Baker County, Oregon, which said application and permit were received in the office of John H. Lewis, State Engineer of the State of Oregon, on the 3rd day of February, 1912, and approved by him on the 28th day of February, 1912, and as amended on December 27th, 1913, and described in Finding No. II.

The following described parcel of real estate, situate, lying and being in the County of Baker and State of Oregon, to-wit:

Beginning at a point on the half section line that is north 500 ft. from the south line of Section, thence west 484 ft., thence north 450 ft., thence east 484 ft., thence south 450 ft., to place of beginning.

containing five acres, and being a part of the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M.

Together with the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining and also all estate title and interest, at law and in equity therein or thereto to the use of the waters of Pine Creek running and flowing through the foregoing described land to be used for any useful purpose that said corporation may use same.

The following described parcel of real estate, situate, lying and being in the County of Baker, State of Oregon:

Beginning at a point on the half section line that is north 300 ft. from the south line of Sec. 3; thence W. 484 ft., thence N. 450 ft., thence E. 484 ft., thence S. 450 ft., to place of beginning, containing five acres, and being a part of the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M.

Also a right of way for the pipe line of The Cornucopia Mines Company of Oregon over and through that certain portion of the lands described as follows:

The S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$, the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec., for said distance of 3,500 ft. more or less.

The above described premises and right of way are in Tp. 7, S. R. 45, E. W. M., said pipe line to be used for electric and power purposes.

Together with the tenements, hereditaments and

appurtenances thereunto belonging or in anywise appertaining; and also all estate title and interest, at law and in equity, therein or thereto to the use of the waters of Pine Creek running and flowing through the foregoing described land to be used for any useful purpose that said corporation may use same.

All the following bounded and described real property, situated in the County of Baker and State of Oregon:

Beginning at a point on the half section line that is north 300 ft. from the south line of Section 3, thence W. 660 ft., thence N. 330 ft., thence W. 660 ft., thence S. 330 ft. to the place of beginning, containing 5 acres and being a part of the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. Willamette Meridian, also a right of way 25 ft. in width for pipe line and transmission line from the south line of N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, through the S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7, S. R. 45, E. W. M., and to be located according to surveys, agreed upon by Alexander McDonald and Robert M. Betts, receiver for The Cornucopia Mines Company of Oregon, the length of his line is not to exceed 3,700 feet.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and also all estate right, title and interest in and to the same, including dower and claim of dower.

And that the purchaser or purchasers, or anyone acquiring or claiming to acquire title to the said property, or any part thereof, by virtue of any sale thereof, or the confirmation of such sale, or the execution of or by virtue of any deed therefor, either from the said Ed. Rand, Special Master in Chancery, or the said Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon, or any deed from The Cornucopia Mines Company of Oregon, and any successor in interest under any one or either of said deeds, takes and holds title to the said premises subject to the said claim and the said judgment, and that any title so conveyed or acquired is subject and inferior to said claim and judgment; and that said claim and judgment is a prior and superior lien to any one or either of said conveyances, and of said trust deed or mortgage.

III.

That a lien is hereby declared in favor of the said John L. Bisher, as guardian ad litem of John L. Bisher, Jr., for the injuries sustained by the said John L. Bisher, Jr., on the 29th day of July, 1912, and the claim based thereon evidenced by the said judgment, for the amount thereof and costs and accrued interest thereon and such lien is hereby declared to be and exist upon any and all of the property mentioned and described in such trust deed or mortgage, and on any and all property thereafter acquired by the said The Cornucopia Mines Company of Oregon, or the said Robert M. Betts as receiver thereof; and that for the payment and

satisfaction of said claim and lien, all of the said property is hereby seized, and any and all of said property is hereby declared to be subject to such lien and such claim of the said John L. Bisher, guardian ad litem, and the said lien is hereby declared to be superior and prior in time and right to the said lien created by said trust deed or mortgage, and on any property conveyed to or acquired by the said The Cornucopia Mines Company of Oregon after the execution of such trust deed or mortgage, and on any and all property conveyed to or acquired by the said Robert M. Betts as receiver thereof; and that any purchaser or purchasers of said property or any part thereof, took their respective conveyances and acquired any title they may have thereto, subject to the said claim and to the said judgment.

IV.

That to satisfy such claim and such lien, it is further ORDERED, ADJUDGED and DECREED that, in default of the payment of satisfaction of such lien or judgment:

First.

That any and all of said property which was conveyed to or acquired by the said The Cornucopia Mines Company of Oregon, or the receiver thereof, on and after the said Robert M. Betts was appointed and qualified as such receiver, as mentioned and described in Findings No. II and Findings No. IV, V and VI of this decree, or such portion thereof as may be necessary, shall be sold as hereinafter provided.

Second.

Should the proceeds of such sale be not sufficient to satisfy this decree, that any and all of the property mentioned and described in such trust deed or mortgage, and as specifically described in paragraph I of this decree, shall be sold.

Third.

That for the purpose of making such sale, Ed. Rand, the present sheriff of Baker County, Oregon, is hereby appointed Special Master of this Court. That any and all of such property mentioned and described in the First Subdivision of this paragraph shall be sold as one property and not in separate parcels, to satisfy the amount due and to become due on such claims and the judgment based thereon, together with the costs and disbursements in that action and accrued interest thereon, and for the costs of sale; and that in the event the proceeds of such sale are not sufficient to satisfy such claim and judgment, with costs and accruing costs, then any and all of the property mentioned and described in paragraph I of this decree shall be sold as one property and not in separate parcels, to satisfy any amount remaining due or to become due on such claim and the judgment based thereon, together with the costs and disbursements in that action, with accrued interest thereon and costs of sale; and that the said Ed. Rand, Special Master, make such sale in accordance with the orders and practice of this Court, and that at any such sale or sales the said

John L. Bisher, guardian ad litem, may become the purchaser, and that any and all of the property ordered to be sold under this decree shall be sold at public sale to the highest bidder, between 9 o'clock in the morning and 4 o'clock in the evening, at the door of the courthouse of said Baker County in the City of Baker, the county seat thereof. That notice of such sale shall be given by said Master by publication thereof once each week for four successive weeks preceding the date of sale in the Pine Valley Herald, a weekly newspaper of general circulation in said Baker County; that said notice shall contain a statement of the time and place of sale, the terms and conditions thereof and a description of the property to be sold.

And it is further ORDERED, ADJUDGED and DECREED by the Court that in the event the said John L. Bisher, guardian ad litem, should become the purchaser at such sale, he shall be entitled to use and apply in payment of the purchase price thereof the amount of the said claim and judgment, but that a sufficient portion of the purchase price should be paid in cash to provide moneys for the payment of all costs and expenses incurred in the making of such sale, and that the Master return any cash proceeds of said sale to the clerk of this Court, and that the same be paid to the clerk of this Court, and upon the completion and confirmation by the Court of the said sale, made under and pursuant to this decree, the said clerk shall pay out such moneys as follows:

1. To the expenses of the sale of said property.
2. To the satisfaction of the said claim and judgment of the said John L. Bisher, guardian ad litem, against Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon, and
3. That any amount then remaining shall be paid out and distributed upon the further order of this Court.

That upon the making of such sale, the purchaser thereof shall be let into the immediate possession of any property so sold, and that a Writ of Assistance may and shall issue to put such purchaser into possession, and that upon the completion and confirmation of and sale made under and pursuant to this decree, unless the said property so sold be redeemed, or the said judgment otherwise satisfied, said Ed. Rand, as such Special Master, shall make, execute and deliver to the purchaser or purchasers of said property a good and sufficient deed of conveyance thereof, in fee simple, free and clear of any and all charges, liens or incumbrances which deed shall specify the property so conveyed and the sum paid therefor.

And it is further ADJUDGED and DECREED that the purchaser at such sale, and to whom such deed shall be so executed, shall have a title to said property so conveyed which shall be superior in right and prior in time to any title conveyed by any deed executed by the said Ed. Rand, as Special Master, in the former sale based upon the decree rendered in this suit in favor of the said Hamilton Trust

Company and against The Cornucopia Mines Company of Oregon, et al; or to any deed or title which was thereby conveyed, or to any title conveyed by deed or otherwise from said Robert M. Betts, as receiver of The Cornucopia Mines Company of Oregon, or by the said The Cornucopia Mines Company of Oregon, which was executed after the said Robert M. Betts was appointed and qualified as such receiver, and that such titled shall be superior in right and prior in time to that of any subsequent purchaser or purchaser under any one or either of such former conveyances; and that EXECUTION may issue to enforce this decree at any time on or after this date.

Done and dated at Portland, Oregon, this 10th day of July, 1914.

CHAS. E. WOLVERTON,
Judge.

Filed July 10th, 1914.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 30th day of July, 1914, there was duly filed in said Court, and cause, a Petition for Appeal, in words and figures as follows, to-wit:

Petition for Appeal.

To the Honorable Charles E. Wolverton, and Robert S. Bean, United States District Judges for the District of Oregon:

The above named complainant and respondents,

feeling themselves aggrieved by the decree and order made and entered in this cause on the 10th day of July, 1914, do hereby appeal from said decree and order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignments of error, which is filed herewith, and pray that their appeal be allowed and that a citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree and order was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California.

And your petitioners further desiring to stay the execution of the decree and order, here tender a good and sufficient bond in the sum of \$15,000.00, and prays that with the allowance of the appeal a supersedeas be issued.

C. E. S. WOOD, R. W. MONTAGUE,
ISAAC D. HUNT, ERSKINE WOOD,
as WOOD, MONTAGUE & HUNT,
Solicitors and Counsel for Complainants
and Respondents.

The above appeal is hereby allowed. Let a writ of supersedeas issue.

CHAS. E. WOLVERTON,
Judge.

Filed July 30th, 1914.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 30th day of July, 1914, there was duly filed in said Court, and cause, an Assignment of Errors, in words and figures as follows, to-wit:

Assignment of Errors.

And on now this the day of July, A. D. 1914, came the complainant by Wood, Montague & Hunt and Emmett Callahan, attorneys for complainant, and say that the decree entered in favor and on behalf of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, intervener in the above entitled cause on the 10th day of July, 1914, is erroneous and unjust to complainant, and that it was error on the part of the District Court of the United States for the District of Oregon in regard to the matters and things hereinafter set forth, and complainant make this, its

ASSIGNMENTS OF ERROR.

I.

The Court erred in permitting John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, to intervene herein, because the District Court of the United States for the District of Oregon, and the Judge thereof, had and have no jurisdiction, right or authority to permit said Bisher to intervene in the above entitled action, or of the matters, things or controversies involved therein, as the matters and

things involved in said suit were fully and finally determined and closed by the final decree of this Court, by its decree made and signed on the 30th day of April, 1914; and the Court and Judge were without jurisdiction to make or grant the decree of this Court made and signed herein on July 10th, 1914.

II.

The Court erred in overruling and denying complainant's motion to dismiss and disallow the petition in intervention filed herein by intervener on May 14th, 1913.

III.

The Court erred in sustaining and allowing the motion made and filed herein by intervenor on the 12th day of December, 1913, dismissing and disallowing the answer of complainant filed herein on the 20th day of June, 1913; and said Judge exceeded his jurisdiction and erred in making and granting said order dismissing the complainant's said answer, said order having been made and filed herein on December 22nd, 1913.

IV.

The Court erred in making a decree herein on the 10th day of July, 1914, wherein it decreed and declared in favor of John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, for injuries sustained by said John L. Bisher, Jr., on the 29th day of July, 1912, evidenced by a judgment, costs, and

accrued interest thereon, and such lien was declared to be and exist upon any and all of the property mentioned and described in a certain trust deed or mortgage of complainants therein, and on any and all property thereafter acquired by said The Cornucopia Mines Company of Oregon or the said Robert M. Betts, receiver thereof; and that for the payment of satisfaction of said judgment and lien all of the said property was thereby seized, and any and all of said property was thereby declared to be subject to such judgment lien and such claim of the said John L. Bisher, guardian ad litem, and the said lien declared and decreed in said decree to be superior and prior in time and right to the said lien created by a certain trust deed or mortgage of complainant therein, and on any property conveyed to or acquired by The Cornucopia Mines Company of Oregon after the execution of such trust deed or mortgage, and on any and all property conveyed to or acquired by the said Robert M. Betts as receiver thereof; and that any purchaser or purchasers of said property, or any part thereof, took their respective conveyances and acquired any title they may have thereto, subject to the superior and prior lien in right and time to the lien created by the said judgment in favor of John L. Bisher, guardian ad litem.

WHEREFORE, complainant prays that the said decree made by the District Court of the United States for the District of Oregon on the 10th day of July, 1914, in favor of the petitioner in intervention, be reversed and set aside, and that such

further order be entered herein as will protect the rights and property of complainant.

C. E. S. WOOD, R. W. MONTAGUE,
ISAAC D. HUNT, ERSKINE WOOD,
as WOOD, MONTAGUE & HUNT,
EMMETT CALLAHAN,
Solicitors and Counsel for Complainant.

Filed July 30th, 1914.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on Thursday, the 30th day of July, 1914, the same being the 22nd Judicial day of the regular July, 1914, term of said Court: present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Allowing Appeal.

On this 30th day of July, 1914, came the above named complainants, by their attorney of record, and filed herein and presented to the Court a petition praying for the allowance of an Appeal herein, praying also that a transcript of the record and proceedings and papers upon which the decree and order was made and rendered on the 10th day of July, 1914, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and such other and further proceedings may be had as may appear proper in the premises.

On consideration whereof the Court orders further proceedings to stay, and does allow the appeal as prayed for, a supersedeas bond to be given in the sum of \$15,000.00.

CHAS. E. WOLVERTON,
Judge.

Filed July 30th, 1914.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 30th day of July, 1914, there was duly filed in said Court, and cause, a Bond on Appeal, in words and figures as follows. to-wit:

Bond on Appeal.

Know all men by These Presents:

That we the above named complainants, Hamilton Trust Company, a corporation, duly organized under the laws of the State of New York, and doing business as such corporation in the State of Oregon, as principal, and FIDELITY and CASUALTY COMPANY, a corporation duly organized under the laws of the State of New York and duly licensed as such corporation under the laws of the State of Oregon, for the purpose of making, guaranteeing and becoming sole surety upon bonds and undertakings, does hereby undertake as surety, and is held and firmly bound unto the above named Intervener, John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, in the sum of FIFTEEN THOUSAND

DOLLARS, for the payment whereof well and truly to be made unto the said Intervener above named, said HAMILTON TRUST COMPANY, a corporation complainants, and FIDELITY and CASUALTY COMPANY of New York, a corporation, bind themselves, their successors and assigns jointly and severally by these presents.

Whereas, lately at a term of the District Court of the United States for the District of Oregon in a suit pending in said Court between Hamilton Trust Company, a corporation complainant, and The Cornucopia Mines Company of Oregon, a corporation, et al, respondents, and John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, as INTERVENER therein, the Court made and rendered a decree on the 10th day of July, 1914, ordering a resale of the mines and property theretofore by decree of said Court made in favor of the Hamilton Trust Company, complainant, in the above entitled suit, on the 30th day of April, 1912; that said Court by its decree of July 10th, 1914, as aforesaid, decreed that said intervener named in the above entitled cause had a first and superior lien on the property described in said decrees as aforesaid paramount, superior in right and prior in time to the mortgage bonds described in the Court's decree made in the above entitled cause on April 30th, 1912; and said complainant having obtained a writ of appeal and filed a copy thereof in the clerk's office of said Court to reverse the judgment and decree made by the Court on the 10th day of July, 1914, in the

aforesaid suit and a citation directed to said INTERVENER and admonishing him to be and appear at the next session of the UNITED STATES CIRCUIT COURT OF APPEALS for the Ninth Circuit.

Now, therefore, the condition of the above obligation is such that if the above named complainant, Hamilton Trust Company, a corporation, shall prosecute said writ of Appeal to effect and answer all damages, judgment, costs and interest if it fails to make good its plea, and reverse the said order, decree and judgment of the Court made by said Court on the 10th day of July, 1914, in the above entitled cause, then the above obligation to be void, else to be and remain in full force and virtue.

IN WITNESS WHEREOF, the said Hamilton Trust Company, a corporation, and the FIDELITY and CASUALTY COMPANY, a corporation, have caused these presents to be executed this 29th day of July, 1914.

HAMILTON TRUST CO.,

Complainant.

By C. E. S. WOOD,

Attorney for Hamilton Trust Co.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK.

By O. W. DAVIDSON,

Its Attorney in Fact.

(Seal)

- Attest: M. E. NEWTON.

Countersigned at Portland, Oregon by Seeley & Co., General Agents.

Examined and approved this 29th day of July, 1914.

CHAS. E. WOLVERTON,
Judge.

Filed July 30th, 1914.

A. M. CANNON,
Clerk.

And afterwards, to-wit, on the 2nd day of October, 1914, there was duly filed in said Court, and cause, a Statement of the Evidence in words and figures as follows, to-wit:

Evidence.

*In the District Court of the United States for the
District of Oregon.*

HAMILTON TRUST COMPANY,
Complainant,

v.

THE CORNUCOPIA MINES COMPANY of Oregon, a corporation, and
Valentine Laubenheimer and S. W.
Holmes,

Respondents.

John L. Bisher, Jr., by John L. Bisher,
his Guardian ad litem,

Intervener.

C. E. S. WOOD and EMMETT CALLAHAN for
Complainant, BOOTHE & RICHARDSON and
CHAS. A. JOHNS for Intervener.

Before CHARLES E. WOLVERTON, Judge.

Testimony of ROBERT M. BETTS, the Receiver.

Portland, Oregon, July 10th, 1914.

Mr. Wood: Mr. Betts is here for examination pursuant to the court order. There was a request in the order that he make a report, but we have asked that the examination be taken, and that will be extended and filed as a report. It seemed unnecessary to duplicate it—if that is satisfactory. Or it can be supplemented with anything further that is required.

COURT: Do you desire to proceed now with the report in that way?

Mr. Wood: Yes.

ROBERT M. BETTS, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Wood: What is your name?

A. Robert M. Betts.

Q. You are receiver for The Cornucopia Mines Company?

A. Yes, sir.

Q. Mr. Betts, there has been some question herein as to properties that were acquired by The Cornucopia Mines Company, deeds to which were executed

by you as receiver, subsequent to the sale to me as trustee at Baker City—I forgot the date myself. I wish you would take up a history of those matters, and make report of it now in Court, exhibiting such deeds and documents as you have.

A. The matter is simply this: The company has never had sufficient power to operate the mine and the mill, and it had been planned on the part of the receivership to extend the present pipe-line further down the creek in order to obtain a higher head, and thereby increase the power; and, as this was necessary for the benefit of the mine, I made application to the State Engineer, and offered to buy a piece of ground from Alexander McDonald.

Q. State when you made this application, if you made the negotiations.

A. The application was made on the 3rd day of February, 1912.

Q. Now, just read into the record, in that connection, the essential part of that paper, just what you applied for. We don't want all its formalities and verbiage, but just a description of what you applied for.

A. Well, I will have to amplify that a little bit by saying that we already owned the water-right, and we merely took the same water and carried it under pressure farther down the creek, but that the State law required that we ask for a permit. So I asked for a permit for 9 1-3 cubic feet per second, the power to be applied for mining purposes.

Q. You asked for that as receiver?

A. I asked for that as receiver.

Q. And the water you already were using—already had the water-rights?

A. We already had the water-rights, since 1895.

Q. And this was not an amplification of that at all?

Mr. Johns: I suggest, Colonel, that these questions are very leading.

Mr. Wood: Oh, they are; I supposed that that was the idea—to get at it.

Q. When you state that in your application you applied for 9 second feet, was it?

A. Yes.

Q. Was that an application for a new water-right?

A. No, sir.

Q. What was it?

A. It was an application to carry this water farther down the creek.

Q. For what purpose?

A. For the purpose of generating more power.

Q. Getting greater head?

A. Getting a greater head.

Q. Well, now, go ahead.

A. I purchased five acres of ground from Alexander McDonald, on which to locate the power-house.

Q. When did you come to an agreement with him for this purchase?

A. The latter part of February, 1912. Now, I would like to say this in regard to this: There seem to be three deeds. The way that occurred, there was

some placer mining going on, and for fear that these men who wanted placer ground might tie McDonald up, I got him to deed me five acres of ground; but it was later determined, when the pipe-line was surveyed, that the ground covered by the original deed did not quite cover the ground on which we wished to place the power-house. Then another deed was made to cover this.

Q. Have you got those deeds?

A. I have, yes, sir.

Q. I wish you would read the essential parts of them into the record—the date and the signatures and the description. And before you do that, Mr. Betts, state who furnished the money for these purchases.

Mr. Johns: Objected to as immaterial.

COURT: I suppose that will come probably in the report anyhow.

A. It is covered by the report now.

COURT: Have you made a report in this case?

A. Yes, your Honor.

Q. Just state who furnished the money, and produce the vouchers showing it.

A. Well, the money was furnished by the receiver and the lessee. The bank account as carried is "Robert M. Betts, Receiver."

Q. Where did the funds originate? Where did they come from? From the earnings of the mine?

A. Yes, sir.

Q. They were not sent forward from New York?

A. Not those funds, no, sir.

Q. I was asking the question because I was under the belief that those funds were sent from New York.

A. No. A great deal of funds were sent, but not those.

Q. Well, that is all right. Now, will you read the deeds, giving the dates, and the grantor, and the grantee, and the description? Also the place and time of record.

A. July 16th, 1912, deed from Alexander McDonald to Cornucopia Mines Company of Oregon. Now, I hardly see why it is necessary to read all this description into the record. It merely covers almost the identical ground. It was a good deal like this desk—the first plot of ground was more square, and was not long enough—and as we only bought five acres we had a new survey made, and made it longer and not so wide.

Q. But still it was five acres in quantity?

A. It was five acres in quantity.

Mr. Wood: Well, unless Mr. Johns wants it, I don't see the importance of a full description.

Mr. Johns: I think we would like to have all those descriptions read.

COURT: Very well.

Mr. Wood: May it please the Court, I am due over in the State Court at this time, and I will ask to be excused for a time, anyway.

COURT: Very well.

A. "Beginning at a point on the half section line

that is north 300 feet from the south line of section 3; thence west 484 feet; thence north 450 feet; thence east 484 feet; thence south 450 feet to place of beginning; containing five acres, and being a part of the southeast quarter of the southwest quarter of Section 3, Township 7 South, Range 45, E. W. M."

COURT: When was that deed recorded, and where?

A. July 16th, recorded in Baker City.

Mr. Callahan: Baker County?

A. Baker County.

Mr. Johns: Just a moment. That is not all of the description.

A. It says, "Also a right of way for the pipeline of The Cornucopia Mines Company of Oregon, over and through that certain portion of the lands described as follows: The S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, the N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Section 3"—

Mr. Johns: Is that 3 in that deed?

A. No, it doesn't say, but that is the section I thought it was.

Mr. Johns: The figure "3" is not here?

A. It is not here. I thought it was a typographical error. This is the original deed. Well, we will leave the section out. (Continues reading) "for said distance of 3,500 feet, more or less. The above described premises and right of way are in Township 7 S, R. 45, E. W. M., said pipe line to be used for electric and power purposes." Do you want me to read any more?

Mr. Johns: That is the description. That is all there is. Well, now, just a moment. I don't want to seem particular about this, but I want to show when that deed was recorded, the book and page it was recorded, and also want to show the consideration for the deed.

A. The consideration was \$250.00.

Mr. Callahan: \$250.00?

Mr. Johns: I mean the consideration expressed in the deed.

A. \$250.00. And it was filed for record August 16th, 1912, in Baker County.

Q. Book 77 of Deeds, page 209?

A. Yes, Book 77, page 209. Now, the next deed is dated August 1st, 1912, from Alexander McDonald to The Cornucopia Mines Company of Oregon. The description, "Beginning at a point on the half-section line that is north 300 feet from the south line of section three; thence west 660 feet"—you see, Mr. Johns, it is made longer than the other one.

Mr. Johns: I understand that. All we are asking for is to read those descriptions in the record.

A. All right. (Continues reading.) "Thence north 330 feet; thence east 660 feet; thence south 330 feet to the place of beginning. Containing five acres and being a part of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section three, Tp. 7 South, Range 45, E. Willamette Meridian. Also a right of way twenty-five feet in width, for pipe-line and transmission line from the south line of Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, through the Southeast $\frac{1}{4}$ of the

Northwest $\frac{1}{4}$, the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$, the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section three, 1p. seven South, Range 45, E. W. M., and to be located according to surveys agreed upon by said Alexander McDonald and Robt. M. Betts, receiver for The Cornucopia Mines Company of Oregon; the length of this line is not to exceed thirty-seven hundred feet."

Consideration \$250.00. Filed for record the 7th day of August, 1912. Book 77, page 183.

COURT: Do I understand this covers practically the same land that was covered by the prior deed?

A. It covers the same ground, yes, sir, and there was no more money consideration. That is, we didn't pay him any more money.

Direct examination continued by Mr. Callahan.

Q. Mr. Betts, do I understand that you put the same number of acres in this latter deed that has been read into the record as is included in the former?

A. Yes, sir.

Q. You simply extended it in a different form and shape?

A. Yes, sir, that is all. We made it more rectangular.

COURT: Well, the two deeds together, then, would make more than five acres that you got?

A. Well, they would.

COURT: You have not re-deeded?

A. No, I have not re-deeded.

Q. Follow that up with the other deed, Mr. Betts.

A. From me as receiver, you mean?

Q. The receivership deed.

A. Now, as I understand the matter, these improvements being contemplated prior to the receivership, and being more or less necessary—

Mr. Johns: Just a moment. I don't care to argue this case with the witness, nor to have the witness argue it with us. As far as we are concerned, we simply want the facts. I think the understanding of the witness is immaterial and unimportant.

A. Well, the facts themselves are in the deed, Mr. Johns.

Q. Go on, Mr. Betts.

A. I supposed that the water-right and this deeded land from McDonald went with the property covered by the mortgage. That was my interpretation of the mortgage. But the water-right in Salem stood on record as "Robert M. Betts, Receiver," so I wrote a note to the State Engineer and asked him to change that to the name of The Cornucopia Mines Company of New York—the new owners. In reply, he stated that request like that was not sufficient; that it had to be something to be written into the records. So he asked for a deed to be made out to be placed on file. The deed, which is this deed,—

Q. That is what is known as the Receiver's Deed, then, is it?

A. Yes. It was made out and sent to Salem for record, and that is all there was of the matter.

COURT: Give the date of the deed, and read the description. This deed is from you?*

A. From me to Cornucopia Mines Company of New York. The date of the deed is November 20th, 1912, from Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, to The Cornucopia Mines Company of New York. The description is as follows:

“Water right and appropriation numbered application No. 2056, to the State of Oregon through its State Engineer John H. Lewis, and permit numbered 1060 to appropriate the Public Waters of the State of Oregon.

“Said water appropriation is taken out of Pine Creek, near the Town of Cornucopia, Baker County, Oregon, for the purpose of generating electric power for operating the stamp mills, machinery and other works and lighting the Cornucopia mines at or near the Town of Cornucopia, Baker County, Oregon. That the point of diversion of said water appropriation is located 38 chains S. 66 degrees 30' W. of N. E. corner of section 3, T. 7 S. of Range 45, E. Willamette Meridian, being within the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 3, T. 7 S., Range 45, E. W. M., in Baker County, Oregon. Said water appropriation is to be taken from said Pine Creek at foregoing described point of appropriation by an intake into a flume terminating in the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., Range 45, E. W. M., in Baker County, Oregon; the name of the ditch or flume is named Cornucopia Mines Company Flume.

“Electric power is to be generated by an electric power plant with Pelton wheels, located upon the S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., Range 45, E. W. M.

“Said water appropriation and water-right, after being used for said power purposes, is returned to said described Pine Creek at a point S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Tp. 7 S., Range 45, E. W. M., in Baker County, Oregon.

“For a fuller and accurate description of the said water-right and appropriation hereby granted and conveyed by this deed, reference is hereby made to application No. 2056, and permit No. 1060, in the office of the State Engineer, of Oregon, at Salem, Oregon; received by said engineer for the State of Oregon, at his said office on the 3rd day of February, 1912, at 8 o'clock A. M., and approved by said John H. Lewis, State Engineer of Oregon, on February 28th, 1912.”

Q. Mr. Betts, read the first part of that deed into the record. This is the original deed, is it?

A. This is a copy of the original deed.

“This deed, made this 20th day of November, 1912, between Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, a corporation organized under and by virtue of the laws of the State of Maine, and owning and holding mining and real property in Baker County, State of Oregon, party of the first part, and The Cornucopia Mines Company of New York, a corporation duly organized under and by virtue of the laws of the State of New York, the party of the second part:

“Whereas, the said receiver as aforesaid, by virtue of the authority vested in him as receiver by a duly made and signed order of the United States District Court for the State of Oregon, made by said Court on the 21st day of December, 1912, appointing said Robert M. Betts the receiver of all the property, real and personal, of The Cornucopia Mines Company of Oregon; that said Robert M. Betts, under and by virtue of said foregoing order of said Court, did thereafter give bond and did duly qualify as such receiver, and is now the duly appointed, qualified and acting receiver of The Cornucopia Mines Company of Oregon, a corporation;

Now, therefore, this deed witnesseth, that the said Robert M. Betts, receiver of The Cornucopia Mines Company of Oregon, a corporation, does hereby as such receiver hereby convey and grant unto The Cornucopia Mines Company of New York, a corporation, under and by virtue of the order and direction of the said United States District Court for Oregon, made upon the 30th day of April, 1912, the following described real property and water-right and water appropriation, to-wit:”

Q. Now, Mr. Betts, turn to the application to the State Engineer for the water appropriation.

Mr. Johns: Just a moment. Have you the application?

Mr. Callahan: It is here.

Mr. Johns: Why not offer it in evidence?

Mr. Callahan: That is what we are going to do—identify it.

Q. You identify this, Mr. Betts, as the original application?

A. This is the original application as made by me to the State Engineer.

Mr. Callahan: I offer this in evidence, and ask that it be copied into the record.

The paper reads as follows:

“Permit No. 1060.

Application for a Permit to Appropriate the Public Waters of the State of Oregon.

I, Robt. M. Betts, of Cornucopia, County of Baker, State of Oregon, do hereby make application for a permit to appropriate the following described public waters of the State of Oregon, subject to existing rights:

1. The source of the proposed appropriation is Pine Creek.

2. The amount of water which the applicant intends to apply to beneficial use is 9 1-3 cubic feet per second.

3. The use to which the water is to be applied is Power for Mining Purposes.

4. The point of diversion is located 38 chains S. 66 degrees 30" W. of N. E. corner of Sec. 3, T. 7 S., R. 45, E. Willamette Meridian, being within the N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., R. 45 E., W. M., in the County of Baker.

5. The Flume to be .62 miles in length, termin-

ating in the N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., R. 45 E., W. M., the proposed location being shown throughout on the accompanying map.

6. The name of the ditch, canal or other works is Cornucopia Mines Company Flume.

Description of Works.

Diversion Works—

7. (a) Height of dam, etc. (Blank.)
(b) Description of headgate. Timber.

Canal System—

8. (a) Give dimensions of each point of canal where materially changed in size, stating miles from headgate. At headgate: Width on top (at water line) 4 feet; width on bottom, 4 feet; depth of water, 1 foot; grade, 5 feet fall per one thousand feet.

(b) At ——— miles from headgate: Width on top (at water line), 4 feet; width on bottom, 4 feet; depth of water, 1 foot; grade, 5 feet fall per one thousand feet.

Same size all along.

Fill in the following information where the water is used for irrigation:

9. (Blank).

Power, Mining, Manufacturing, or Transportation Purposes—

10. (a) Total amount of power to be developed, 500 horsepower.

(b) Total fall to be utilized, 470 feet.

(Head)

(c) The nature of the works by means of which the power is to be developed, Electric Plant with Pelton Wheel.

(d) Such works to be located in S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 3, Tp. 7 S., R. 45 E., W. M.

(e) Is water to be returned to any stream?
Yes.

(f) If so, name stream and locate point of return. Pine Creek.

S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 3, Tp. 7 S., R. 45 E., W. M.

(g) The use to which the power is to be applied is Running Quartz Mill and Compressors.

(h) The nature of the mines to be served. Cornucopia Mines Co.

Municipal Supply—

11. (Blank).

12. Estimated cost of proposed works, \$15,000.

13. Construction work will begin on or before June 1st, 1912.

14. Construction work will be completed on or before October 15th, 1912.

15. The water will be completely applied to the proposed use on or before November 1st, 1912.

Duplicate maps of the proposed ditch or other

works, prepared in accordance with the rules of the Board of Control, accompany this application.

ROBT. M. BETTS,
Receiver of Cornucopia Mines Company
of Oregon.

Signed in the presence of us as witnesses:

- (1) R. C. BISHOP, Cornucopia, Oregon.
- (2) E. C. McFADDEN, Cornucopia, Oregon.

State of Oregon,
County of Marion.—ss.

This is to certify that I have examined the foregoing application and do hereby grant the same, subject to the following limitations and conditions:

The appropriation for power purposes shall be limited to the development of 500 theoretical horsepower. The Priority Date of this Permit is February 3rd, 1912.

The amount of water appropriated shall be limited to the amount which can be applied to beneficial use and not to exceed 9 1-3 (9.33) cubic feet per second.

Actual construction work shall begin on or before February 28th, 1913, and shall thereafter be prosecuted with reasonable diligence and be completed on or before February 28, 1914.

Complete application of the water to the proposed use shall be made on or before February 28th, 1915.

WITNESS my hand this 28th day of February,
1912.

JOHN H. LEWIS,
State Engineer."

INDORSED:

"Application No. 2056.
Permit No. 1060.

PERMIT.

To Appropriate the Public Waters of the State of
Oregon.

Division No. 2. District No.

This instrument was first received in the office
of the State Engineer at Salem, Oregon, on the 3rd
day of February, 1912, at 8 o'clock A. M.

Approved February 28th, 1912.

Recorded in Book No. 4 of Permits on Page
1060.

JOHN H. LEWIS,
State Engineer.

1 Map\$68.00."

COURT: What were you going to say?

A. I was going to say, your Honor, so that this
won't be misunderstood, when I talked with Mc-
Donald about getting this new power site, he wanted
us to give up the old power site when we were
through with it, as it was good land and he could
use it for agricultural purposes. So I agreed with
him that, if we took down the old power-house, I
would give him back the land; but if we decided that

it was necessary to keep this old power-house that I would pay him \$250 additional. Then when I finally gave him the balance, we decided to keep the power-house, I gave him \$300 on account of the expense we had put him to in tearing up his field and putting this pipe-line in, and getting ready for the pipe-line. So altogether he was paid \$550.

Q. That came out of the estate money?

A. Yes.

CROSS EXAMINATION.

Questions by Mr. Johns:

Were any other deeds executed by Alexander McDonald to The Cornucopia Mines Company of Oregon while you were receiver?

A. Mr. Johns, I don't remember any other deeds.

Mr. Callahan: Let me have that deed of February 20th. I will identify it and put it in.

A. I noticed it in that order, but I couldn't find it in the office; nor could we find it in the County Clerk's office at Baker City.

Mr. Johns: It was there.

A. I hardly remember this (referring to deed), but I am sure it is all right.

Mr. Callahan: We will just read this abstract in then.

Mr. Johns: No, just read it in the record the same as you did the other.

COURT: That is to whom?

A. This is to The Cornucopia Mines Company of Oregon. This covers the same ground.

Q. It covers the same ground?

A. You see, Mr. Johns, it is rather hard to tell six or eight months ahead just where you want to locate your power-house.

Q. Yes, I understand that, Mr. Betts.

A. But I wanted to tie up this ground as nearly as I knew how before someone else got hold of it.

Q. Yes, but for the purpose of this case we want this put into the record.

Mr. Callahan: Yes, I am going to put it in now. I just want to know if we are to put it all in.

Mr. Johns: No, just put it in the same way you did the others. Then the explanations and arguments can follow.

Mr. Callahan: All right.

COURT: Does this cover the same ground again?

A. Yes.

COURT: The same five acres?

A. Yes, sir.

COURT: You have three deeds?

A. Three deeds covering practically the same ground.

Mr. Callahan: Warranty deed Alexander McDonald to The Cornucopia Mines Company of Oregon, a corporation of Maine. Date of record, March 5th, 1912. Book 76 of Deeds, page 431. Consideration, \$250. Date of acknowledgment, February 20th, 1912. Conveys the following described parcel of real

estate, situate, lying and being in the County of Baker, State of Oregon, to-wit: Beginning at a point on the half-section line that is north 300 feet from the south line of Section; thence west 484 feet; thence north 450 feet; thence east 484 feet; thence south 450 feet to place of beginning, containing five acres, and being a part of the southeast quarter of the southwest quarter of Section 3, Township 7 S., R. 45 E., W. M.

COURT: Are those all the deeds now that are involved here?

A. Yes, sir.

Mr. Callahan: That is all I care about at the present time.

Cross examination continued.

Q. Now, Mr. Betts, did you ever make any subsequent filing with the State Engineer?

A. For additional water, do you mean?

Q. Or for any purpose?

A. Yes, sir.

Q. When?

A. I don't remember the date.

Q. And why did you make that filing?

A. To get more water. The trouble with the power situation there is that in the winter there is insufficient power, and we took up some water from a little stream on the west side of Pine Creek, and ran an eight-inch pipe line.

Q. Did you ever make an amended filing of this?

A. The original?

Q. Yes.

A. Yes, sir.

Q. When did you do that?

A. I don't remember the date.

Q. I call you attention to what purports to be a certified copy, from the office of the State Engineer at Salem, and ask you to examine and state if you know what it is.

A. Yes, sir.

Q. Look it over, and see if that is the amended filing you made.

A. Yes, sir.

Q. When did you make that filing?

A. The 27th day of December, 1913.

Q. Do you recognize that as correct?

A. Yes, sir.

Mr. Johns: We desire to offer that in evidence. There is a certificate attached to that whole record, Colonel. I don't want to offer that in evidence.

Mr. Callahan: No, I don't want to be technical about it. But I see the date is December 13th, 1913.

Mr. Johns: Well, that is right. That is what the record shows.

Mr. Callahan: I don't want to object to it, but what relevancy has it?

A. I don't see what it has to do with this, though.

Mr. Callahan: If it is relevant, I am perfectly willing it should go in. December 13th, 1913, a year afterwards.

COURT: I think it better go in.

Mr. Johns: It is not December 13th. It is December 27th.

Mr. Callahan: It is 1913, however. Well, put it in.

Mr. Johns: "Amendment on Water Application numbered Permit No. 1060. The point of diversion is amended to read 23.13 chains south, 48 degrees 38' east of the center of section line between sections 34 and 27, Township 6 South, Range 45 E., W. M., being within the northwest quarter of the northeast quarter of section 34, Township 6 South, Range 45 E., W. M., instead of 38 chains south, 66 degrees 30" west of the northeast corner of Section 3, Township 7 South, Range 45 E., W. M., being within the northwest quarter of the northeast quarter Section 3, Township 7 South, Range 45 E., W. M., as indicated by original permit.

State of Oregon,
County of Marion.—ss.

I hereby certify that the within was received by me on the 27th day of December, 1913, at 8 o'clock A. M., and was recorded in Miscellaneous Records, Volume 1, page 282. John H. Lewis, State Engineer, per Louisa Arthur, Deputy."

Q. You made that, too, did you?

A. Yes, sir.

Mr. Callahan: Whom was this application made by?

Mr. Johns: He made it himself as receiver.

A. Not as receiver, no, sir.

COURT: In what capacity?

A. Cornucopia Mines Company of New York.

COURT: What office do you hold in that company?

A. I am the manager.

Mr. Callahan: I want to call your attention to that.

A. This is not the same one.

Q. Have you the original amended application?

A. You mean the original of this?

Q. The original amended application. The one that I read to you?

A. No. Not with me, no, sir.

Mr. Johns: Your Honor, I called up the State Engineer, and asked to find out about how that application was made, and the office advised me it was returned to Mr. Betts—the original—and that this was all that is in the engineer's office. For that reason, I would ask the witness to produce the original.

Mr. Callahan: Is the original any different from this?

Mr. Johns: I don't know. I want to know by whom the application is signed. There is nothing in the record to show. The office of the State Engineer doesn't show.

A. Of this amendment, do you mean?

Q. Yes.

A. Where is the amendment now? I can take oath that that is the whole of that.

Q. I want to see the original.

A. I will be glad to send it down.

Mr. Callahan: Have you the original, Mr. Betts?

A. Yes.

Mr. Callahan: Where is it?

A. It is up in the safe, at the mine.

COURT: Well, that may be sent down here for comparison.

Mr. Callahan: Oh, yes, we will do that.

A. Yes. It is merely the same thing. If you would like to have me, I can explain why that was done. It is merely a matter of trying to conform to the laws of the State of Oregon.

COURT: Well, you got an additional water-right?

A. No, that is not an additional.

Q. This is an amendment of the permit No. 1060?

A. This doesn't take any more water. It merely changes the point of diversion.

Q. Do you know about what distance the change was made—that was made by that change?

A. About a mile—a mile in length.

Q. It gave you that much more power?

A. It gave no more power whatever.

Q. Then, why did you do it?

A. Under the laws, the old holders of water-rights can retain their old water-rights, but any subsequent applications come under the new law. The flume was held under the old law, and in making the application for this permit to carry the water on down in a pressure pipe, to get more head, we mentioned the point of diversion as the flume, which was the penstock for the pipe-line. The flume itself ran up the creek about a mile. Then about six

months ago I discovered that we held part of the system under the old water-right; that is, the flume part under the old water-right, and the other part, the pipe-line, under the new law. So I amended the point of diversion to read at the head of the flume instead of at the foot of the flume.

Q. Now, in executing any of these deeds, did you ever apply to the Court for an order?

A. No, sir.

Q. Why was this deed executed to The Cornucopia Mines Company of New York?

A. Merely to satisfy the State Engineer, to get that on the record.

Q. You did it to satisfy the State Engineer?

A. Yes, sir.

Q. That is the only reason?

A. That was the only reason.

Q. How does it happen that it was executed on the identical day that the deed was made by Colonel Wood to The Cornucopia Mines Company of New York?

A. I don't know that it was.

Mr. Callahan: Just wait a moment. I want to get that into the record, if it is correct.

A. I don't know that it was.

Q. If your deed was executed on the 20th of November, 1912, to The Cornucopia Mines Company of New York, and Colonel Wood deeded on the 20th of November, 1912, it was on the same day, was it not?

A. Yes, sir.

Q. Now, can you give any reason why it was done on those particular days?

A. Mr. Johns, I never knew the date of Colonel Wood's deed. I didn't know until now.

Q. And you made this deed, then, to The Cornucopia Mines Company of New York at the instance and request of the State Engineer?

A. Yes, sir.

Q. And you want this Court to believe that statement?

Mr. Callahan: Oh, well, now, that is all right.

Q. Now, Mr. Betts, after you made these water-filings and purchased this property from Mr. McDonald, what, if anything, was done with the filings? What did you do with them?

A. How do you mean?

Q. Well, did you make any improvements on them?

A. On the ground that I bought from McDonald?

Q. Yes.

A. Yes, sir.

Q. What did you do?

A. Built a power-house.

Q. When did you do that?

A. About September, 1912.

Q. And what is the value of those improvements? What did they cost?

A. About \$20,000.

Q. Power-house, you say?

A. Yes, sir.

Q. For the purpose of generating power?

A. Yes, sir.

Q. Is power generated there now?

A. Yes, sir.

Q. How long has it been generated?

A. Since a year ago last February.

Q. What is done with that power?

A. It is used to operate the mine and the mill.

Q. And when did you commence the construction of that power-house on that ground that you bought of McDonald?

A. In August or September, 1912.

COURT: That was after the master's deed was made for the sale of this property under mortgage?

A. Yes, sir, it was after the sale in Baker City.

Mr. Johns: No, I will bring that out. I might state for correction, your Honor, the master's deed to Colonel Wood was executed on the 20th of November, 1912.

COURT: To Colonel Wood?

Mr. Johns: Yes, sir.

COURT: And then his deed to the company was the same date?

Mr. Johns: Yes, sir.

Mr. Callahan: What date was that you gave, Mr. Johns, as the master's deed?

Mr. Johns: 20th of November, 1912.

Mr. Callahan: No.

Mr. Johns: Well, you produce the deed. I asked you to produce it. Now, you produce it.

COURT: This transaction, then, was after this deed was executed?

Mr. Johns: Before.

COURT: This is September, 1912?

A. Yes, sir.

Mr. Johns: Before. Now, you produce that deed.

Mr. Callahan: Which deed, Mr. Johns?

Mr. Johns: The deed from Ed. Rand to Colonel Wood.

Mr. Callahan: I haven't got it; never was any suggestion of it. I haven't got it. It is on the records here of Baker County. We may have it in our files—I don't know. It went to New York. I never had any occasion to have the original.

Mr. Johns: It is in this abstract here.

COURT: What I want to arrive at in this case is, that—this receiver has not made up a detailed account of his proceedings?

Mr. Callahan: Yes, your Honor, he has made up a detailed account.

COURT: Have you got that account here?

Mr. Callahan: It is in this case—the Hamilton Trust Company case.

COURT: Have you that?

Mr. Callahan: Mr. Betts has a copy of it, I take it.

A. It is merely the accounting, your Honor, month by month.

COURT: When was this filed?

A. I think it was filed sometime in the month of August, 1912.

Mr. Callahan: It was filed August 30th, 1912.

Q. Did you ever make an application to this Court for an order, or did you ever obtain an order

from this Court, to buy this property from McDonald?

A. No, sir.

Q. Did you ever make an application to this Court, or did you ever obtain an order from this Court, authorizing and directing you to make this application to the State Engineer for this water-right?

A. No, sir.

Q. Did you ever apply to this Court, or did you ever obtain an order from this Court, to construct that power-house on the McDonald land?

A. No, sir. That was not constructed by the receiver.

Q. It was done while you were receiver, wasn't it?

A. Yes. I was lessee at the same time.

COURT: You didn't construct that as lessee?

A. Yes, sir. That is, I constructed it while I had a lease on it.

Q. Do you mean to say, Mr. Betts, that there is any provision in your lease requiring you to construct a power-house upon this land, or the McDonald land, at a cost of \$20,000, to use for the benefit of the company?

A. Now, just wait a moment.

Mr. Johns: Just read the question.

A. I would like to state my position on that.

Mr. Callahan: Go on and state your position.

Mr. Johns: Just a moment. The witness can answer the question, and then make any explanation he wants to.

A. All right. (Question read.) No, there is no provision in the lease.

COURT: What explanation do you want to make?

A. I was going to say that the lease was given me primarily so that I could go ahead and carry on this work with greater expedition, and so that my hands would not be tied. All the men connected with the concern lived in New York, and they had no head office, and the lease was given to me more with that in view, so that I could go ahead with a free hand.

COURT: Then, you were operating in effect for the lessor?

A. For the company, yes.

COURT: Well, was it the New York company or the Oregon Company?

A. No, the New York company. It wasn't a company at that time at all. It was a group.

COURT: And in this case, although you were lessee of these mines by written contract, you were virtually the manager for the New York company?

A. Well, there was no—

COURT: I am asking you if that was the effect.

A. Yes, sir. There wasn't any company.

COURT: But you were the manager?

A. For men in the East.

COURT: I mean for a company that was to be organized?

A. Yes, sir.

COURT: That is, for the promoters of the company?

A. Yes, sir.

COURT: That was your real position?

A. Yes, sir.

Q. And that company was afterwards organized as The Cornucopia Mines Company of New York?

A. Yes, sir.

Q. Now, Mr. Betts, have you any funds in your possession as receiver?

A. No, sir.

COURT: You haven't made any report, have you, as to the funds paid into Court to comply with the sale?

Mr. Callahan: No, we are expecting Mr. Betts to make that report now. He hasn't any money. I supposed that was understood.

COURT: Well, there were certain funds to be paid into Court to pay the costs until the costs were satisfied, and until the claim against the estate which was prior to the mortgage was satisfied under the terms of the sale, and I think a report ought to be made of that, to inform the Court what has been done.

Mr. Callahan: Oh, yes, I will make that report; but Colonel Wood paid the costs and took care of that.

COURT: It ought to have gone through court proceedings, so the Court would know.

Mr. Callahan: I suppose he will make that report. He attended to that part of it. I know he paid it. I wasn't present.

COURT: Is the master's report filed, and does that contain that information?

Mr. Johns: No, sir, there is no such information in the master's report.

Mr. Callahan: I don't know that it does in detail, but someway it indicates that it is paid, or Colonel Wood has made the statement that he paid it in greenbacks. I know the clerk's costs were paid, because he returned me some funds—\$10 or \$12 or such a matter—of the surplus by his check. He did that very recently, within the last few months.

Mr. Johns: I don't want to testify, your Honor, but if it is necessary, I will go into that. The master's report shows there was not a single dollar of money paid over to the master from this sale; that the property was bid in for the bonds, and the bonds only; and the confirmation shows it, too.

COURT: That is the very reason why this Court is inclined to allow this procedure by which an execution may go against this property for a resale. The order of the Court provided, when the sale was made that the purchaser might pay in bonds, but the expenses and costs of the sale, and, by my rendition of the order of sale, the expenses and costs of the receivership should first be paid. The purchaser has not complied with that order. The purchaser has not paid the costs of the receivership, which I think to be legitimate costs, including this demand. And I think there ought to be a report made as to what was done in that respect, and what money was paid into Court, and why this other money was not paid.

Mr. Callahan: Well, that knowledge is within Colonel Wood, of course. He attended to that part of it.

COURT: I think the report ought to go to the full extent, so as to inform this Court just what was done; and if there has not been money paid into the Court for the purpose of taking care of the expenses of the receivership, it ought to be paid in now.

Mr. Callahan: That is true, but if the Court will remember this: The property was sold on the 29th day of June under the master's sale, and Mr. Betts, of course, received no compensation as receiver, because he received his compensation out of his lease, and not made out of the lease, he received \$350 as his commission in this report here.

COURT: It transpires now that he was acting for the promoters of this second company, the New York Company.

Mr. Callahan: That is true. He had a written lease of that character.

COURT: I suppose if this judgment had been against him as lessee, that fact would not have come to light at all.

Mr. Johns: Well, then, why doesn't he pay the judgment?

Mr. Callahan: The accident upon which judgment is recovered didn't occur until a month after that time, and there were no costs to pay other than were paid.

COURT: After which time?

Mr. Callahan: After the day of the sale, and the

time the money should be paid in under the decree of the Court.

Mr. Richardson: The decree of the Court was that he was to give possession after the confirmation. He could not give possession under the decree of the Court until after a deed had been executed.

COURT: I don't think that makes any difference, because the spirit and intent and purpose of the order was to protect the creditors of the estate until this matter was entirely settled, and that was the duty of the purchaser, to take care of those things.

Mr. Callahan: Well, I am sure, if the Court please, while it don't change it now, those things were cared for that were to be cared for at that time, that were known to have occurred.

COURT: There has been no report made to this Court. The Court has not been informed at all.

Q. Mr. Betts, while you were in charge of this property as receiver, what improvements, if any, did you make on that property?

A. Very few as receiver.

Q. Well, did you make any at all?

A. Not that I remember of now, no, sir.

Q. Didn't you construct a cyanide plant on it?

A. Not as receiver, no, sir.

Q. Didn't you do it otherwise.

A. I put in other money, yes, sir.

Q. How much did that cyanide plant cost?

A. About \$70,000 or \$80,000.

Q. And what other betterments and improve-

ments did you put on this property during the time that you were receiver?

A. Merely the power-house.

Q. And what other improvements?

A. None that I remember now as being of any magnitude.

Q. And when did you first commence the making of those improvements after you were appointed?

A. Not until in the spring, the actual work. The improvements were all contemplated, and the plans made for carrying on the work, in October, 1911.

Q. Now, you made a report to this Court about your expenditures and receipts, didn't you?

A. Yes, sir.

Q. Do you know about the amount of your expenditures that were made from January 1st, 1912, to the first of August, 1912?

A. The total amount, you mean?

Q. Yes.

A. I don't know offhand.

Q. Here is a recapitulation of it.

A. \$71,681.27.

Q. What was the amount of your receipts during that period?

A. \$781.81 less than that.

Q. You didn't execute any other deed to any other person or corporation as receiver, than the deed which you executed for the water-right of date November 20th, 1912, to The Cornucopia Mines Company of New York?

A. Not that I remember of, Mr. Johns.

Q. Well, if you had made such a deed, you would remember it, wouldn't you?

A. Not necessarily, no, sir.

Q. What consideration did you receive for making that deed to The Cornucopia Mines Company of New York?

A. The consideration, I think, in the deed was \$1.00 and other valuable consideration.

Q. Well, what consideration did you receive for making it?

COURT: What was the actual consideration?

A. That is all. There was no money—no other money paid; no money paid.

Q. Now, at that time you knew you were receiver, didn't you?

A. Yes, sir.

Q. And you knew that you were receiver appointed under decree of this Court, weren't you?

A. Yes, sir.

Q. Is there anything in that decree directing you to execute a deed to any property to The Cornucopia Mines Company of New York?

A. No, sir. But as I understood the matter, it was transferred by the mortgage—the mortgage covered that; but it was necessary, in order to perfect the title, to have a deed.

Q. Where did you get that information?

A. I got it from talking with the lawyers, and from the mortgage itself.

Q. What lawyer did you talk to?

A. Colonel Wood and Mr. Callahan. I don't

remember any specific instance where they told me that, but that has been my interpretation of it all the time, that this was for the benefit—

Q. Then, as a matter of fact, Mr. Betts, that deed was made by you as receiver to The Cornucopia Mines Company of New York at the suggestion and advice of your counsel, wasn't it?

A. You might say that; not specifically, though.

Q. Then when you state that you made that deed at the request of the State Engineer, you were wrong, weren't you?

A. No. I will tell you, Mr. Johns, until this matter was brought up, I had forgotten and overlooked the fact entirely that a deed had been executed to the new company. I had forgotten about it. It was more a matter of form. I know there was some talk of it at one time, there was some correspondence about it, but I thought the matter had dropped. Then when this came up, I remembered that the State Engineer required that it be in the form of a deed so they could record it.

Q. While you were receiver, appointed by this Court and under bonds, it never occurred to you that the Court had anything to do with what you did as receiver?

A. Yes; but not in that way. I never had very many instructions from the Court. When I first went in as receiver, I imagined that I would talk things over with the Court, but I later discovered that it seemed to be mere formality and I had to use my best judgment.

Q. Now, you say this money you paid to McDonald, you paid to him as receiver?

A. Yes, sir.

Q. Examine these vouchers. What do those vouchers show?

A. You mean the heading?

Q. Yes.

A. It is stamped "Robt. M. Betts, Lessee."

Q. That is wrong, is it?

A. No, sir; it is not wrong. The Court said I could act in both capacities, as lessee and receiver.

Q. Well, you say you paid this money as receiver?

A. I will show you right here, Mr. Johns—I took the lessee's money.

MR. JOHNS: We desire to offer these two in evidence.

COURT: Very well. Are those receipts part of the record of this case?

MR. JOHNS: Yes, they are vouchers, your Honor.

The vouchers are marked "Intervener's Ex. 1" and "Intervener's Ex. 2," and read as follows:

"Voucher No..... Check No..... Cornucopia, Oregon, Aug. 1, 1912. (Printed) The Cornucopia Mines Co., of Oregon. (Stamped) Robt. M. Betts, Lessee.

"To Alex. McDonald, of Cornucopia, Ore. For 5 acres of ground and right of way, \$300.00. Examined and..... Approved..... Found Correct.Accountant.Manager.

Received August 1, 1912, of the Cornucopia Mines Co., of Ore.

(Stamped) Robt. M. Betts, Lessee,
the sum of Three hundred and no/100 Dollars in full of above account.

“(Signed here) Alex. McDonald.”

INDORSED:

“Voucher No. 767. \$300.00.

(Printed) The Cornucopia Mines Co., of Oregon.

(Stamped over) Robt. M. Betts, Lessee, in account with Alex. McDonald for the month of July, 1912.

Distribution. Power Expense \$300.00.”

“Voucher No..... Check No..... Cornucopia, Ore., March 1, 1912.

(Printed) The Cornucopia Mines Co., of Oregon.

(Stamped over) Robt. M. Betts, Lessee.

To Alex. McDonald of Cornucopia, Ore.

Payment in full for 5 acres as power site \$250.00.

Duplicate.

Approved:

Manager.

Received Feb. 20, 1912, of (Printed) The Cornucopia Mines Co., of Oregon, (Stamped over) Robt. M. Betts, Lessee, the sum of Two Hundred Fifty and no/100 Dollars in full of above account.

“(Sign here).....”

INDORSED:

“Voucher No. 605. \$250.00.
(Printed) The Cornucopia Mines Co., of Oregon
(Stamped over) Robt. M. Betts, Lessee.
In account with Alex. McDonald,
For the Month of Feb., 1912.
Distribution—Power Expense. \$250.00.”

A. You seem to have the impression that we are trying to do something underhanded. I would like to say to you that we are not. Everything has been open and aboveboard as far as possible.

Q. Well, Mr. Betts, we simply want to get these facts in the record, and then we will argue the case by and by.

A. Well, I would like to show right now that they were carried as one and the same account. When the receivership started \$1224.90 was the balance I had in the bank, and I transferred that to “Robert M. Betts, Receiver,” and carried it on through the months, until at the end there was a deficit; and because of that deficit, I gave the Bishers \$600 of money out of the other fund, because this fund was short.

COURT: You say you gave them \$600?

A. I gave them \$600.

COURT: On what account?

A. To help Johnny in the hospital.

COURT: After he was hurt?

A. After he was hurt; yes, sir.

COURT: To apply on this judgment?

A. No, before there was any—there wasn't a thought of a suit. They always claimed that it was

his own fault, and there was no suggestion of a suit—nothing like that; and the matter was considered closed. And along in October Mrs. Bisher came up to the mine, and she said, “Now, you have said that you would help me in any way you could, and,” she said, “the time has come. John (her husband) has come to Portland—”

COURT: I think there was some testimony on that at the trial.

A. “The lawyers want Johnny to bring suit, and,” she said, “I don’t want them to bring suit, because, first, I feel it is not fair to you, and, second, I don’t think we can get any money.”

MR. JOHNS: Your Honor, I don’t think—

COURT: It is not necessary to go into that.

MR. CALLAHAN: None of this testimony was put in as a defense in that case.

A. No. As receiver this report was all filed, and I supposed the matter was all cleared up, your Honor, before any suit was brought. And I told Mrs. Bisher what I would do, and she broke down and cried, and said that was more than she could expect, and she would telegraph John. And the next I knew I was served with papers in the suit.

MR. JONES: Your Honor, I move to strike out all of that statement as immaterial. It has nothing to do with this case.

A. I would like to have things thoroughly understood here. It seems as if I am under fire here as doing something.

MR. JOHNS: It is a matter of the Court’s permission, I suppose. The only trouble is Mrs. Bisher

is not here. We are not permitted to go into our side of it. That is all. It is *ex parte*.

MR. RICHARDSON: If your Honor is not going to strike that out, I was just going to ask the witness one or two questions about this advance.

COURT: I think you better do that through Mr. Johns. With so many people inquiring here, we will get this record mixed up.

MR. JOHNS: Your Honor, the view I take of the matter is that it is wholly immaterial, and while we have our side of the statements made by the witness, we don't care to go into it.

Q. During the time you have been receiver, Mr. Betts, you have been receiving a salary of \$350 a month?

A. As lessee, yes. It came out of this account.

Q. You have been paying yourself as lessee a salary of \$350 a month during the time you were receiver?

A. Yes, sir. That was understood, I think, because I was to receive no compensation as receiver.

Q. Did you ever apply to the Court for an order for that?

A. It was in the original order that I was to receive no compensation as receiver.

Q. Well, did you ever apply to the Court for an order fixing your compensation that you were to have from any one?

A. Why, no. I didn't think that was in the Court's jurisdiction—that was all. I had been receiving that right along.

Q. You thought the Court had nothing to do with that?

A. Why, no. I had been receiving that before the receiver was ever thought of.

Q. With whom did you have this understanding that you were to have \$350 a month?

A. Benjamin B. Lawrence, of New York.

Q. Who is he?

A. He is a mining engineer.

Q. What relation does he sustain to the Cornucopia Mines Company of New York?

A. He is consulting engineer of the company to-day.

Q. One of the stockholders?

A. Yes, sir.

Q. An officer in the company?

A. I think he is vice-president.

COURT: Who is the manager of this company?

A. I am.

COURT: You are the manager?

A. Yes.

COURT: With authority to do all things necessary to the operation of the mine?

A. Yes, sir. That is, except where it requires a resolution of the board; that is, in making deeds and things like that.

COURT: Yes, I understand.

Q. When did you first enter into the employ of these people under the arrangement that you have been testifying about?

A. In November, 1910.

Q. You have been working for the same people all the time ever since?

A. Yes, sir. Would you like to have this cleared up a little more?

Q. I will clear it up. When did you cease your employment for the Cornucopia Mines Company of Oregon?

A. When the receivership started.

Q. And when did you enter on your employment for the Cornucopia Mines Company of New York?

A. When it was formed.

Q. When was that?

A. November, 1912. Well, that is at the termination of the lease. The lease was not renewed after that. All this construction work, etc., had been completed, and things were settled down in a quiet state.

Q. Who completed this construction?

A. I completed it.

Q. I know, but for whom were you acting during that period?

A. For these men in New York.

Q. Well, what men?

A. Well, I didn't know the names of but two of the men connected with it. It was a syndicate of men that the new company was formed of.

Q. What I am getting at, was this syndicate for whom you claimed to be acting while you were receiver and during the time you were making these improvements—was that syndicate the same people that now constitute the Cornucopia Mines Company of New York?

A. No, sir.

Q. Well, who was it?

A. Yes and no. There are a lot of new men in it now. That was one thing that I thought I would clear up if possible.

Q. Well, I want you to clear it up, Mr. Betts. I want to be fair with you.

A. The Searles estate owned or controlled the stock, I think, of the old company, and some of the bonds; and the Court ordered this estate to be closed out.

COURT: Back there?

A. Back there. And the administrator came to Mr. Lawrence, and said, "This has to be sold at a certain date," and asked him if he would buy it in, and Mr. Lawrence said he would. Now, after they bought in this stock which was held by the Searles estate, they were unable to get some of the rest of the stock, and this Laubheimer judgment came up, and they bought the bonds. It was easier to buy the bonds than the stock. And Mr. Laubheimer had a judgment against the company for some \$12,000.

Q. The Cornucopia Mines Company of Oregon?

A. Of Oregon. So they decided to foreclose these bonds, and clear up all the litigation and these other claims, and have the property in good shape.

COURT: Was there other outstanding indebtedness against the Cornucopia Mines Company of Oregon, except the bonded indebtedness?

A. Only the Laubheimer judgment. I think that was all.

COURT: It was your intention, then, to clear up all matters against this estate?

A. Yes; try to make it at least minable. It had always been in litigation before.

COURT: It was also your intention to take care of the receivership charges in closing out this business?

A. Now, of that I had no knowledge, you see. That is, how do you mean?

COURT: It was also the intention of the promoters, when the receiver was appointed, to take care of the costs and charges and expenses of closing out the receivership?

A. Yes, sir.

Q. So as to get a clear mine?

A. Yes. And so they advanced money. Now, who these friends of Mr. Lawrence's were, I do not know. I had known Mr. Lawrence for years, and he had confidence enough in me to say, "Here, you can handle this better to have a lease on it, because we have no organization back there, and on account of the short summer seasons this work might have to be rushed, and we would prefer to give you a lease on it, so that you will not be bothered with"—

Q. Getting orders from headquarters?

A. "Getting orders from headquarters." And of course just at that time when the lease was made, we hadn't altogether decided to build the mill. Our idea was to get the mine so as to justify the expenditure—first to develop the mine so as to justify the expenditure; and as month by month we were able to make the mine show up enough ore, we finally decided to build this mill. And that was about the time, almost coincident with the time the re-

ceiver was appointed. And while the lease does not specify anything about my compensation, Mr. Lawrence said, "If we don't get this mill completed in time to go ahead and do the work—go ahead and mill so that you will receive as much from the profits of the lease, why, we will compensate you for it. And so I continued to draw my salary; that is, draw the same amount as I had received as manager.

Q. Now, Mr. Betts, on what particular piece of land is this power-site constructed? Just point out in the deed there.

A. It is constructed on the ground bought from McDonald.

Q. I know, but ground described in which deed?

COURT: The first, second or third deed?

A. The third deed, the deed of August 1st. That was determined by the final survey.

Q. Executed of date August 1st?

A. Yes.

Q. Upon what lands is the cyanide plant constructed?

A. On the old ground, the ground covered by the mortgage.

Q. Can you point out the land, Mr. Betts? Would you know?

A. No, it is some place—the name of the claim is the Phoenix claim.

Q. And that cyanide plant, you say, cost about \$70,000?

A. Yes, sir.

Q. It is there now, is it?

A. Yes, sir.

Q. Now, this power-plant that was constructed on this land, where did you get the machinery for that?

A. In San Francisco—in San Francisco and New York.

Q. And it was shipped up and put upon that ground during this time?

A. Well, it wasn't erected until the following January, because the machinery was late.

Q. What January?

A. January, 1913.

Q. Now, when this water-filing, or permit rather, was obtained from the office of the State Engineer, was there a ditch or flume-line then extended?

A. Yes, it was all built. The flume had been there for years.

Q. And you rebuilt it?

A. No. You see, Mr. Johns, the flume came about a mile down the creek, which gave about 300 feet fall. But that was not sufficient, so at the end of the pipe-line, where the old power-house was situated, we put in a "Y," and carried this water under pressure farther down the creek, until we got about a 500-foot fall, which increased the pressure, thereby increasing the horse-power.

Q. You took it down by pipe instead of flume?

A. Took it down by pipe, yes, sir.

Q. And how much pipe was put in there?

A. In the neighborhood of 3,500 feet.

Q. And what did that cost?

A. About \$10,000 delivered.

Mr. Johns: I think, your Honor, that is all.

Mr. Callahan: I want to read into the record, from the decree of this Court in the foreclosure case of The Hamilton Trust Company, complainant, v. The Cornucopia Mines Company of Oregon, et al., on page 15 of that decree, as follows:

“At the time of the execution of said deed the said Robert M. Betts, as receiver, shall also make, execute and deliver a good and sufficient deed of conveyance of any and all property of the said, The Cornucopia Mines Company, a corporation, or any interest therein, vested or standing in the name of the receiver, or to which said receiver has acquired any right, title or interest.

“That upon the execution and delivery of the conveyance or conveyances aforesaid, the said purchaser or purchasers, his or their representatives or assigns, be let into the possession of all of the said mortgaged premises or property so conveyed to him or them, and that any of the parties to this cause, their agents, officers and employees, who may be in possession of the said mortgaged premises or property, or any part of the same, and any person who has since the commencement of this suit come into the possession of the same, or any part thereof, shall forthwith surrender possession thereof, to such purchaser or purchasers, his or their representatives or assigns.”

REDIRECT EXAMINATION.

Questions by Mr. Callahan:

Now, just one more question, Mr. Betts, to make it clear to the Court. You have testified here in relation to certain permanent improvements that were made at various times, which were contemplated before the receivership, some carried on during the receivership and some portions carried on after the receivership?

A. Yes.

Q. Now, tell the Court where you got the money to make those expenditures, and to pay for those improvements, and the machinery specifically.

A. It was sent me from Mr. Lawrence's office, and aggregated up till about the first of September some \$83,000.

COURT: What year?

A. 1912.

COURT: That was sent to you prior to the receivership and during the receivership?

A. Yes, sir, prior to the receivership and during the receivership, and was deposited in my name as lessee, in Spokane, Washington, in the Spokane Bank.

Q. You have the checks there?

A. Not all of them. I have part of them.

Q. This fund that was checked out for this specific purpose was deposited in the Spokane Bank?

A. Yes.

Q. Where were you in the habit of carrying your account under the receivership and as lessee of the mine?

A. In the Citizens Bank, of Baker, Oregon. I did my best, your Honor, to keep things separate and straight.

COURT: I have no doubt of that.

Mr. Johns: Now, I want to see if we can agree upon the date that this deed was made.

A. I thought the matter had been merely cleared up, and that my receivership was awaiting its course on the docket to be discharged.

COURT: Well, it would have been discharged, had it not been for this judgment against you as receiver.

A. If that deed was the 7th of October, it was prior to bringing the suit.

Mr. Johns: Can this deed go in the record?

Mr. Callahan: I don't see why it can't. The only question about it, Mr. Johns,—I don't object, excepting it may complicate the record, because it is in the master's report, all of this that is done. It is already in.

Mr. Johns: No, I don't think so. That is the reason I want it in.

Mr. Callahan: Read it in as a matter of testimony.

Mr. Johns: All right. It appears from the record that Ed. Rand, Special Master in this suit, executed his deed to C. E. S. Wood as trustee, of the property mentioned and described in the trustee's mortgage, of date October 7, 1912; that the deed was

recorded on the 10th of October, 1912, in Book 77 Records of Deeds of Baker County, Oregon, on page 384 et seq.

Recess until 2 P. M.

ROBERT M. BETTS resumes the stand.

Examination by the Court.

Q. Mr. Betts, I want to ask you another question. Have you any other property in your possession, or has any other property come into your possession, aside from what has been transferred by these deeds in question, first, by the deed under the foreclosure sale, and the deed you have given as receiver to the New York Company?

A. No, sir. No, nothing. You mean real estate? Have I bought any property?

Q. Well, has any property come into your hands as receiver?

A. No.

Q. That has not been disposed of?

A. No, sir.

Q. I understood counsel to say, the other day, when you were not here—that there were some small items of property, or items of small value.

Mr. Callahan: Mining claims.

COURT: Such as mining claims, situated in different locations.

A. Oh, you mean claims that were not covered by the mortgage and not specified in the mortgage?

Q. Yes.

A. Why, there are some claims, or there were; but they were unpatented claims, and they were of

little or no value, and they were allowed to lapse; that is, the assessment work was not done on them.

Q. Do you mean that you, as receiver, abandoned those claims?

A. I didn't do the work on them.

Q. Well, by not doing the work, that would mean an abandonment?

A. An abandonment, yes, sir.

Q. So you don't claim any further right in those claims?

A. No. Some of them have been relocated, and some of them have not.

Q. Been relocated by other persons?

A. By other persons, and some of them have not.

Q. They are of minor value, any of them?

A. Yes, they are of minor value.

Mr. Callahan: If the Court please, in that connection, to make the situation clear: I had a list of those claims he mentioned at that time. They were not included in the receivership; it had nothing to do with them. They were separate and distinct. He never exercised any receivership over them. They belonged to The Cornucopia Mines Company of Oregon, but they were not included in the mortgage.

COURT: Not included in the receivership?

Mr. Callahan: In the receivership, or the mortgage.

A. You see, they just lay there, and there was nothing done with them. They were not covered by

the mortgage, and there was nothing ever done with them.

COURT: You have no intention of claiming those?

A. No; not unless something should develop that we might consider that they were worth some value—something like that.

Mr. Callahan: Mr. Betts, that would be true of any other adjacent Government land there, you would locate it if you thought there was any value in it?

A. Yes. For instance, we perhaps might have wanted to run a telephone line, power line, or something. In order to get the ground, we might locate the ground, you see, regardless of the value as a mining claim.

COURT: I see. That is all.

Excused.

Mr. Johns: Your Honor. I don't know what you may want to do with that decree, but your Honor will note that the amount of costs in Bisher against the Receiver is left blank there, and I will ask leave to fill that in from the Court records below.

COURT: Very well.

Mr. Johns: And your Honor will also note that that provides there for publication of six weeks. I have been thinking that matter over, and I don't know of any reason why it should be published for six weeks. I think four weeks is sufficient. Your Honor will also note that the decree there is based upon the records on file. I want an insertion there,

“and upon testimony taken in open Court,” so as to show that way.

COURT: Very well. Four weeks will be sufficient, I suppose.

Mr. Callahan: Oh, it isn't important to us at all. However, we are going to suggest that we will file a report as to the payment of the costs of this Court, and the Master, that he received his pay under that provision of the decree. We will make that showing.

Mr. Johns: That is all right.

Mr. Callahan: If you Honor please, may we note an exception?

COURT: Yes, you may note an exception. That is an exception to the Court signing the order?

Mr. Callahan: Yes. The Court's order of sale, etc.

COURT: You may be allowed your exception.

In the above entitled cause, it is hereby stipulated by the solicitors for Appellant and Appellee, that the Clerk, in having the transcript printed on Appeal herein, set forth the testimony in full, and not in narrative form, except the last eleven lines on the type-written page 30 of the transcript of testimony herein, and the first two lines on page 31, thereof; and that the Court may approve the foregoing statement of testimony, if the same to the

Court shall seem proper, in accordance with this stipulation.

EMMETT CALLAHAN,
one of Appellants Attorneys.

CHARLES A. JOHNS,
of Attorney for Appellee.

The foregoing statement of the testimony on appeal is hereby approved and allowed, this 30th day of September, 1914.

CHAS. E. WOLVERTON,
Judge.

Filed October 2nd, 1914.

G. H. MARSH,
Clerk.

And, to-wit, on the 16th day of September, 1914, there was duly filed in said Court, and cause, a Praeipie for Transcript, in words and figures as follows, to-wit:

PRAECIPE FOR TRANSCRIPT.

Memorandum for Clerk to Prepare Record on Appeal.

Included in the Printed Record on Appeal the following papers and records:

Complaint in full.

Subpoenas ad Respondendum.

Motion filed in case December 7th, 1911.

U. S. Marshal's return of service of Subpoenas.

Court Order filed December 7th, 1911.

Affidavit filed December 7th, 1911.

Order for service outside of District, filed December 12th, 1911.

Petition for service outside District, filed December 12th, 1911.

Order appointing receiver, filed December 21st, 1911.

U. S. Marshal's return, filed December 23rd, 1911.

Receiver's bond.

Cornucopia Mines Company's demurrer, filed January 22nd, 1912.

Order continuing hearing on demurrer.

Order continuing hearing on demurrer to February 19th, 1912. Also order overruling demurer on Monday, February 19th, 1912.

Decree pro confesso, March 2, 1912.

Decree of foreclosure favor of complainant, April 30th, 1912; omit from this decree the description of the property, and insert in the printed record, "For description of property foreclosed by this decree, see Bill of Complaint, pages to"

Special master report of sale; omit from printed record the description herein, and refer to: "Description of property sold by Master herein, see pages of Complainant's Bill, where property sold is fully described.

Affidavit of publisher publishing notice of sale, omit description of property described in published notice of sale; for description of property described

in notice of sale, see Bill of Complaint, pages
to

Affidavit of notice of sale in New York paper,
omit description as in last paragraph, and refer to
same in Bill of Complaint as above.

Motion to confirm sale to C. E. Wood.

Confirmation of sale, omit description of prop-
erty, and refer to Bill of Complaint as above.

Receiver's report.

Affidavit in re to appointment of guardian.

Order appointing guardian.

Application to intervene.

Order to show cause in intervention.

Petition in intervention.

Motion filed to dismiss petition in intervention,
May 29th, 1913.

Order allowing petitioner Bisher to intervene.

Answer to order to show cause in intervention.

Motion in re to intervention.

Motion of intervener, filed December 12th, 1913.

Order sustaining motion in intervention, Decem-
ber 22nd, 1913.

Motion filed June 8th, 1914.

Order filed June 30th, 1914, requiring receiver
to report.

Notice of motion, June 8th, 1914.

Decree in favor of intervener, July 10th, 1914.

And all other papers filed in the foregoing case
not bound in the judgment roll, or since the judg-
ment roll was made up.

A copy of the testimony taken herein in narra-
tive form.

Omit the description of property set out in the decree of July 10th, 1914, commencing at paragraph 1 marked thus V page 9 of said decree, to and including paragraph 33, page 16, of said decree.

Assignments of error; citation on appeal, app. bonds, etc.

C. E. S. Wood, report.

WOOD, MONTAGUE & HUNT, and
EMMETT CALLAHAN,
Attorneys for Appellant.

Due service of the within Memo for record on Appeal by certified copy as prescribed by law, is hereby admitted at Portland, Oregon, September 16th, 1914.

BOOTHE & RICHARDSON,
Attorneys for Appellee.

Filed September 16th, 1914.

G. H. MARSH,
Clerk.

And, to-wit, on the 30th day of June, 1914, there was duly FILED in said Court and cause a plea and objections to the jurisdiction of the Court, in words and figures as follows, to-wit:

PLEA TO JURISDICTION.

Now comes Hamilton Trust Company, complainant in the above entitled suit in equity, and Robert M. Betts, as Receiver, by Wood, Montague & Hunt, their attorneys, and the Cornucopia Mines Company of Oregon, by Emmett Callahan, its attorney, respondent, for the special purpose, and no other, until the questions herein raised are decided of objecting to the jurisdiction of this Court, by protestation, in not confessing or acknowledging all or any part of the matters or things set forth in the pleas of the intervenor, John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, by the pleas, pleading, motions and more especially the decree subjecting property to the Bisher lien, and authorizing and directing its sale as set forth in the decree asked by the intervenor herein and for cause of objection, protestation and demur thereto shows:

I.

That it appears from the intervenor's petition in intervention herein, and intervenor's motion thereon, that this Court has no jurisdiction to hear and determine the prayer and things petitioned for by said intervenor in his petition in intervention or motion thereon in equity; that this Court has no jurisdic-

tion to in any way determine or granting by order or decree the things prayed for in intervenor's petition in intervention, or to grant the decree and order filed by the intervenor herein in this suit on the 29th day of June, 1914; that this Court is wholly without jurisdiction herein and precluded from hearing of this suit in equity against or adverse to the Hamilton Trust Company, complainant herein, and Robert M. Betts, Receiver of the Cornucopia Mines Company of Oregon, respondent, or against the Cornucopia Mines Company of Oregon, respondent.

II.

That this Court has no jurisdiction to make and determine by its decree herein any of the things or facts set forth and alleged in paragraph II of the decree prayed for by John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, intervenor; as the facts and things therein alleged are not in evidence or recorded in the record by testimony given in this said suit in equity or otherwise; that said facts set forth in said paragraph II, as aforesaid, do not appear upon the record in said suit in equity wherein said John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, as intervenor, or at all.

III.

That the facts set forth in paragraph III of said decree subjecting the property foreclosed in the foregoing suit in equity, and subjecting the same to the lien of said Bisher, is no part of said record in said suit in equity as aforesaid.

IV.

That the facts set forth in said decree as aforesaid in paragraph IV thereof, are no part of the record in said suit in equity to foreclose the mortgaged premises described in complainant's bill of complaint therein; that the facts set forth in said paragraph IV as aforesaid in said decree as prayed for by intervenor, are no part of the record in said suit in equity heretofore referred to.

VI.

That the facts set forth in the V paragraph of the foregoing mentioned decree do not appear in said foreclosure suit as aforesaid upon the record thereof by way of testimony, or evidence, or otherwise, or at all, in said foreclosure suit as aforesaid.

V.

That the facts and things set forth and contained in paragraph VI of the foregoing and afore mentioned decree prayed for by the intervenor John L. Bisher herein, are no part of the record in said foregoing mentioned foreclosure suit in equity by way of oral or written testimony, or embodied in the record in any way in said suit.

VII.

That said petition in intervention by said John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, as intervenor, and said decree as prayed for and filed herein on the 29th day of June, 1914, is wholly without equity against the Hamilton Trust.

Company, complainant, Robert M. Betts, Receiver of Cornucopia Mines Company of Oregon, and the Cornucopia Mines Company of Oregon, respondents.

VIII.

That this Court has no jurisdiction at this time to hear or determine John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, to be granted equitable or other relief against the Hamilton Trust Company, complainant, or Robert M. Betts, Receiver of Cornucopia Mines Company of Oregon, or the Cornucopia Mines Company of Oregon, respondents, for the reason that said John L. Bisher, Jr., by his guardian ad litem, as intervenor, has filed no bill in equity or complaint wherein for any reason or cause he alleges the decree, order of sale, and sale of the property under said decree, order of sale, and sale of the property set forth in the suit and bill of the Hamilton Trust Company, complainant, against the Cornucopia Mines Company of Oregon, et al, respondents, was ever filed in this Court for said purpose or relief to said John L. Bisher, Jr., by his guardian ad litem, as intervenor, or otherwise.

IX.

That this Court has no jurisdiction to hear and determine on the petition in intervention heretofore filed herein by John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, respondent, to determine by decree or otherwise, granting said John L. Bisher, Jr., by John L. Bisher, his guardian ad litem, a superior lien or right to the property heretofore

by decree of this Court, order of sale, and sale thereof, in the suit of the Hamilton Trust Company, complainant, vs. the Cornucopia Mines Company of Oregon, et. al., respondents; that such decree by this Court without jurisdiction so to make said decree would deprive the Hamilton Trust Company, complainant, Robert M. Betts, Receiver of the Cornucopia Mines Company of Oregon, and the Cornucopia Mines Company of Oregon, of their property without due process of law, under the Constitution of the United States and the laws of the United States in such cases made and provided.

X.

That the Hamilton Trust Company, complaint, Robert M. Betts, Receiver of Cornucopia Mines Company of Oregon, and the Cornucopia Mines Company of Oregon, were never served with process or summons issued out of and under the seal of this Court in any suit or action for the purpose of procuring a decree against said foregoing named parties complainant and respondents.

WOOD, MONTAGUE & HUNT,
Attorneys for Complainant and Respondent.

I hereby certify that in my opinion the foregoing objections, protestations and pleading, are well founded in point of law.

WOOD, MONTAGUE & HUNT,
Attorneys for Complainant, Receiver and
Respondents.

Received, accepted by true copy hereof the foregoing objections and demurrer to Decree to create first and prior lien in favor of John L. Bisher, Jr., Intervenor, this 30th day of June, 1914.

CHARLES A. JOHNS,
Attorneys for Intervener.

Filed June 30, 1914. A. M. CANNON, Clerk.

And, to-wit, on the 17th day of July, 1914, there was duly FILED in said Court and cause, a Report and Accounting of Trustee, in words and figures as follows, to-wit:

REPORT OF TRUSTEE.

To the Honorable Charles E. Wolverton, United States District Judge:

Comes now C. E. S. Wood, one of the attorneys for the Hamilton Trust Company, complainant herein, and at the suggestion of the Court, informs the Court:

That he attended the sale held and conducted by Ed. Rand, a special Master duly appointed by this Court, under the decree of this Court dated the 30th day of April, 1912; wherein said special Master was ordered to sell the real and personal property described in said decree.

That said special Master of this Court after full compliance with the orders and directions of said decree of this Court made on the said 30th day of

April, 1912, offered said real and personal property described in said decree for sale on the 29th day of June, 1912, in front of the Court House in Baker City, Baker County, Oregon, to the highest bidder there at.

That at said sale as aforesaid, I, C. E. S. Wood, as Trustee, became the purchaser of said described real and personal property, for the sum of \$432,000.00, and delivered to said special Master of this Court the first mortgage bonds in the sum of \$300,000.00, and accrued interest on said bonds in the sum of \$136,000.00, as provided and decreed by this Court in its said decree of April 30, 1912, in the above entitled suit; and that in addition to the payment of the foregoing sums, I paid cash expenses of said sale of said property in full to date of sale; the costs of this suit and complainants' attorney's fees in full.

That on the date of said sale of said property, the 29th day of June, 1912, there were no expenses of the receivership of said property nor taxes nor other expenses incurred in the care, custody or receivership of the property sold as aforesaid to me as Trustee at the date of sale thereof, to-wit, the 29th day of June, 1912.

C. E. S. WOOD,
Trustee.

United States of America,
District of Oregon.—ss.

I, C. E. S. Wood, first being duly sworn, say that
the foregoing report is true.

C. E. S. WOOD.

Sworn and subscribed to before me this 17th day
of July, 1914.

(Seal.)

ERSKINE WOOD,
Notary Public for Oregon.

Due service of the within Bid and Accounting of
Trustee by certified copy, as prescribed by law, is
hereby admitted at Portland, Oregon, July 17, 1914.

CHARLES A. JOHNS,
Attorney for Intervener.

Filed July 17, 1914. A. M. CANNON, Clerk.

United States of America,
District of Oregon.—ss.

I, G. H. Marsh, clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on appeal in the case in which The Hamilton Trust Company is plaintiff and appellant, and The Cornucopia Mines Company of Oregon, is defendant and appellant, and John L. Bisher, Jr., by John L. Bisher, his guardian *ad litem*, is intervener and appellee, in accordance with the law and the rules of this Court, and in accordance with the praecipe of the appellants filed in said cause, and that the said record is a full, true and correct transcript of the record and proceedings had in said Court, in accordance with said praecipe, as the same appears of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing record is \$. for clerk's fees for preparing the transcript of record and \$. for printing said record, and that same has been paid by said appellants.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at Portland, in said District, on the day of, 1914.

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Clerk.